The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Dean, Vice Chair

MEETING DATE: Monday, March 28, 2011
TIME: 3:15 —5:15 p.m.
PLACE: *Mallory Horne Committee Room,* 37 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 1206** Negron (Similar H 821)	Eyewitness Identification; Cites this act as the "Eyewitness Identification Reform Act." Requires state, county, municipal, and other law enforcement agencies that conduct lineups to follow certain procedures. Requires the eyewitness to sign an acknowledgement that he or she received the instructions about the lineup procedures from the law enforcement agency. Provides for an alternative method of identification of suspects. Requires the Criminal Justice Standards and Training Commission to specify and approve any alternative method used for eyewitness identification, etc. CJ 03/28/2011 JU BC	
2	**SB 1272** Wise (Identical H 611)	Educational Services in DJJ Programs; Provides that adult education general education development test preparation courses and adult education career education courses may be offered as electives to high school level students who have a transition plan that does not include a return to public high school. CJ 03/28/2011 HE BC	
3	**CS/SB 734** Communications, Energy, and Public Utilities / Wise (Similar H 15)	Assault or Battery on Utility Workers; Defines the term "utility worker." Provides for reclassification of certain offenses against utility workers, etc. CU 03/07/2011 Fav/CS CJ 03/28/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 416** Bogdanoff (Similar H 163, H 411)	Public Records; Provides an exemption from public records requirements for photographs and video and audio recordings that depict or record the killing of a person. Authorizes access to such photographs or video or audio recordings by specified members of the immediate family of the deceased subject of the photographs or video or audio recordings. Provides for access to such records by local governmental entities or state or federal agencies in furtherance of official duties. Provides for future legislative review and repeal of the exemption, etc. CJ 03/28/2011 JU GO	
5	**SB 458** Hill (Identical H 193)	Administrative Expunction of Arrest Records; Deletes language pertaining to discretion of a law enforcement agency as to whether to apply to the Department of Law Enforcement for the administrative expunction of any nonjudicial record of any arrest of a minor or an adult who is subsequently determined to have been arrested contrary to law or by mistake. Provides for application for such expunction by the arrestee, or parent or legal guardian of a minor child arrestee, in the absence of such a determination by the law enforcement agency without the endorsement of the request by the agency, etc. CJ 03/28/2011 JU BC	
6	**SB 488** Fasano (Compare CS/H 251)	Sexual Offenses; Permits admission of evidence of the defendant's commission of other crimes of a sexual nature in a criminal case in which the defendant is charged with a crime of a sexual nature. Requires that any property or material that constitutes child pornography and that is used in a criminal proceeding remain in the care, custody, and control of the law enforcement agency, state attorney, or court. Authorizes relocation assistance awards to victims of sexual violence, etc. CJ 03/28/2011 JU HR BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 494** Fasano (Identical H 265)	Sexual Offenders and Predators; Requires a court considering whether to release a defendant on bail to determine whether the defendant is subject to registration as a sexual offender or predator and, if so, to hold the defendant without bail until the first appearance on the case. CJ 03/28/2011 JU BC	
8	**SB 714** Margolis (Identical H 247)	Disabled Parking Permits; Provides for a parking enforcement specialist or agency to validate compliance for the disposition of a citation issued for illegally parking in a space provided for people who have disabilities. Revises requirements for renewal or replacement of a disabled parking permit. Prohibits applying for a new disabled parking permit for a certain period of time upon a second finding of guilt or plea of nolo contendere to unlawful use of such permit, etc. TR 03/09/2011 Favorable CJ 03/28/2011 BC	
9	**SB 746** Altman (Similar CS/H 105)	Open House Parties; Provides that a person who violates the open house party statute a second or subsequent time commits a misdemeanor of the first degree. Provides that a person commits a misdemeanor of the first degree if the violation of the open house party statute causes or contributes to causing serious bodily injury or death. Provides criminal penalties. RI 03/09/2011 Favorable CJ 03/28/2011 BC	
10	**SB 794** Diaz de la Portilla (Compare H 897)	Drug Abuse Prevention and Control; Adds transactions of a controlled substance near a homeless shelter to the list of prohibited acts. CJ 03/28/2011 CF BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**SB 1146** Sachs (Identical H 91)	Drug-related Overdoses; Provides that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for specified offenses in certain circumstances. Provides that a person who experiences a drug-related overdose and needs medical assistance may not be charged, prosecuted, or penalized for specified offenses in certain circumstances, etc. CJ 03/28/2011 HR JU BC	
12	**SB 1226** Joyner	Health Care Fraud; Revises the grounds under which the Department of Health or corresponding board is required to refuse to admit a candidate to an examination and refuse to issue or renew a license, certificate, or registration of a health care practitioner. Provides an exception. Requires the department to adopt rules. HR 03/14/2011 Favorable CJ 03/28/2011 BC	
13	**SB 1334** Bogdanoff (Identical H 917, Compare S 1798)	Sentencing of Inmates; Removes all references to imposing mandatory minimum sentences for defendants convicted of trafficking in controlled substances. Directs the DOC to develop and administer a reentry program for nonviolent offenders which is intended to divert nonviolent offenders from long periods of incarceration. Requires that the program include intensive substance abuse treatment and rehabilitative programming. Authorizes the DOC to enter into contracts with qualified individuals, agencies, or corporations for services for the reentry program, etc. CJ 03/28/2011 JU BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**SB 1390** Dockery	Supervised Reentry Programs for Inmates; Provides legislative intent to encourage the Department of Corrections, to the extent possible, to place inmates in the community to perform paid employment for community work. Provides that an inmate may leave the confinement of prison to participate in a supervised reentry program in which the inmate is housed in the community while working at paid employment or participating in other programs that are approved by the department. Requires the inmate to live at a department-approved residence while participating in the supervised reentry program, etc. CJ 03/28/2011 BC	
15	**SB 1850** Evers (Similar H 1233, Compare CS/S 618)	Juvenile Justice; Includes children 9 years of age or younger at the time of referral for a delinquent act within the definition of those children who are eligible to receive comprehensive mental health services. Encourages law enforcement agencies, school districts, counties, municipalities, and the Department of Juvenile Justice to establish prearrest or postarrest diversion programs and to give first-time misdemeanor offenders and offenders who are 9 years of age or younger an opportunity to participate in the programs, etc. CJ 03/28/2011 CF BC	
16	**SB 372** Bogdanoff (Similar H 1379)	Pretrial Programs; Requires each pretrial release program established by ordinance of a county commission, by administrative order of a court, or by any other means in order to assist in the release of a defendant from pretrial custody to conform to the eligibility criteria set forth by the act. Preempts any conflicting local ordinances, orders, or practices. Requires that the defendant satisfy certain eligibility criteria in order to be assigned to a pretrial release program, etc. CJ 03/22/2011 Temporarily Postponed CJ 03/28/2011 JU BC	

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Eyewitness identification.—

(1) SHORT TITLE.—This section may be cited as the "Eyewitness Identification Reform Act."

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

(a) "Eyewitness" means a person whose identification by sight of another person may be relevant in a criminal proceeding.

(b) "Filler" means a person or a photograph of a person who

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is not suspected of an offense but is included in a lineup.

(c) "Independent administrator" means a person who is not participating in the investigation of a criminal offense and is unaware of which person in the lineup is the suspect.

(d) "Lineup" means a photo lineup or live lineup.

(e) "Lineup administrator" means the person who conducts a lineup.

(f) "Live lineup" means a procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(g) "Photo lineup" means a procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(3) EYEWITNESS IDENTIFICATION PROCEDURES.—Lineups conducted in this state by state, county, municipal, and other law enforcement agencies must meet all of the following requirements:

(a) A lineup must be conducted by an independent administrator.

(b) Before a lineup, the eyewitness shall be instructed that:

1. The perpetrator might or might not be in the lineup;

2. The lineup administrator does not know the suspect's identity;

3. The eyewitness should not feel compelled to make an identification;

4. It is as important to exclude innocent persons as it is

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to identify the perpetrator; and

5. The investigation will continue with or without an identification.

The eyewitness shall acknowledge, in writing, having received a copy of the lineup instructions. If the eyewitness refuses to sign a document acknowledging receipt of the instructions, the lineup administrator shall document the refusal of the eyewitness to sign the writing and then sign the acknowledgement himself or herself.

(4) REMEDIES.—All of the following remedies are available as consequence of a person not complying with the requirements of this section:

(a)1. A failure on the part of a person to comply with any requirement of this section shall be considered by the court when adjudicating motions to suppress eyewitness identification.

2. A failure on the part of a person to comply with any requirement of this section is admissible in support of claims of eyewitness misidentification, as long as such evidence is otherwise admissible.

(b) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications.

(5) EDUCATION AND TRAINING.—The Criminal Justice Standards and Training Commission, in consultation with the Department of Law Enforcement, shall create educational materials and conduct training programs on how to conduct lineups in compliance with

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this section.
Section 2. This act shall take effect July 1, 2011.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete everything before the enacting clause
and insert:
A bill to be entitled
An act relating to eyewitness identification; providing a short title; defining terms; requiring state, county, municipal, and other law enforcement agencies that conduct lineups to follow certain specified procedures; requiring the eyewitness to sign an acknowledgement that he or she received the instructions about the lineup procedures from the law enforcement agency; specifying remedies for failing to adhere to the eyewitness identification procedures; requiring the Criminal Justice Standards and Training Commission to create educational materials and conduct training programs on how to conduct lineups in compliance with the act; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 1206
INTRODUCER:	Senator Negron
SUBJECT:	Eyewitness Identification
DATE:	March 22, 2011
REVISED:	

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

I. Summary:

Senate Bill 1206 creates a procedure that law enforcement officers must follow when they are conducting photographic and live lineups with eyewitnesses to crimes.

The bill provides alternative procedures for photographic lineups so long as the alternative method is specified and approved by the Criminal Justice Standards and Training Commission.

Education and training of law enforcement officers is required on the eyewitness identification procedures provided for in the bill.

Instructions to the jury in a criminal trial is required regarding the reliability of eyewitness identifications.

The bill provides remedies for a defendant when the specified eyewitness identification procedures are not followed. The court may allow a jury to hear evidence of officer noncompliance and the court may consider the evidence in a motion to suppress the identification of the defendant.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Eyewitness misidentification has been a factor in 75 percent of the 267 cases nationwide in which DNA evidence has helped prove wrongful convictions. According to Gary Wells, an Iowa State University psychologist who has studied the problems with eyewitness identification for

more than 20 years, it is the number one reason innocent people are wrongfully convicted.[1] According to the Innocence Project of Florida, the same percentage applies in the 12 Florida cases, nine of which involved issues of eyewitness misidentification.[2]

Florida statutes do not currently set forth requirements for law enforcement officers to follow when conducting eyewitness identification procedures during criminal investigations. At least three other states, including North Carolina, Maryland, and Ohio have enacted statutes regarding eyewitness identification procedures.

There are many variables in eyewitness identification procedures. First, there are different ways to conduct them. For example, in the presentation of photo lineups, there are two main methods: sequential (one photo is shown at the time) and simultaneous (photo array shows all photos at once). Then there are the variables such as what an officer should or shouldn't say to an eyewitness about the procedure, whether the procedure should be videotaped or otherwise recorded, and whether officers have been trained to control body language or other suggestive actions during the procedure.

Some law enforcement agencies, although not statutorily required to follow a particular procedure, have included eyewitness identification procedures in their agency's Standard Operating Procedures. There is no statewide standard, however, and a survey of 230 Florida agencies, conducted by the Innocence Project of Florida, indicated that 37 of those agencies had written policies while 193 did not.[3]

As Dr. Roy Malpass, a professor in Legal Psychology at the University of Texas at El Paso, and an expert in the field of eyewitness identification, explained during his presentation to the Innocence Commission at its January 2011 meeting, it is important to have protocol compliance. Dr. Malpass also recommended videotaping the identification procedure.

Dr. Malpass made further recommendations and offered certain opinions during his presentation to the Innocence Commission in January. These included:

- There is no definitive study showing that sequential or simultaneous presentation is the superior method of presentation, although he believes that sequential administration suppresses all identifications.
- A "confidence statement" from the witness is not a good predictor of accuracy.
- With regard to training on eyewitness identification, much depends upon the "buy-in" of the people being trained.
- Appropriate instructions regarding the procedure should be developed and given to witnesses. For example: the suspect may or may not be in the line-up; there is no requirement to identify a particular person; and if an identification is not made, the investigation will continue.

[1] Presentation to Innocence Commission, November 22, 2010. Suggestive Eyewitness Identification Procedures and the Supreme Court's Reliability Test in Light of Eyewitness Science: 30 Years Later, Wells, Quinlivan, *Law Hum Behav* (2009) 33:1-24. See also, http://articles.orlandosentinel.com/2011-03-21/news/os-innocence-commission-vote-20110321-19_1_lineups-florida-s-innocence-commission-florida-innocence-commisssion.
[2] E-mail correspondence with Seth Miller, Executive Director, Innocence Project of Florida, March 23, 2011.
[3] Survey on file with the Criminal Justice Committee.

- There should be no extraneous comments made by law enforcement officers because informal interaction has the potential to create bias.
- The quality of the photo spread is very important.
- "Blind" administration, where the officer conducting the procedure is unaware of the identity of the suspect, is a good method for use in both sequential and simultaneous administration.[4]

If an agency has a particular protocol in place and the protocol is not followed, the issue becomes ripe for a challenge on the issue of reliability and therefore, admissibility, of the identification evidence at trial. This possibility provides an incentive for protocol compliance. Conversely, if the protocol is followed, motions to suppress should rarely be filed as there is likely no good-faith basis for filing them.

The Florida Supreme Court has ruled on the admissibility of eyewitness identifications at trial as follows:

> The test for suppression of an out-of-court identification is two-fold: (1) whether the police used an unnecessarily suggestive procedure to obtain the out-of-court identification; and (2) if so, considering all the circumstances, whether the suggestive procedure gave rise to a substantial likelihood of irreparable misidentification. *See Thomas v. State,* 748 So.2d 970, 981 (Fla.1999); *Green v. State,* 641 So.2d 391, 394 (Fla.1994); *Grant v. State,* 390 So.2d 341, 343 (Fla.1980). The factors to be considered in evaluating the likelihood of misidentification include:
>
> [T]he opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation. *Grant,* 390 So.2d at 343 (quoting *Neil v. Biggers,* 409 U.S. 188, 199-200, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972)). If the procedures used by the police in obtaining the out-of-court identification were not unnecessarily suggestive, however, the court need not consider the second part of the test. *See Thomas,* 748 So.2d at 981; *Green,* 641 So.2d at 394; *Grant,* 390 So.2d at 344.[5]

Very recently, a central Florida trial court judge has found himself focused on the issue of eyewitness identification after a woman was wrongfully convicted of a crime based on the testimony of three eyewitnesses in his courtroom.[6] The state filed a motion to set aside the conviction and she has since been released from jail. Then in a robbery case that was set for trial before the same central Florida judge, a defense attorney successfully argued last month for a special jury instruction on eyewitness identification.[7] The State is appealing the court's ruling on the special instruction.

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[4] Innocence Commission meeting Minutes, January 2011 meeting.
[5] *Rimmer v. State,* 825 So.2d 304 (Fla. 2002).
[6] http://articles.orlandosentinel.com/2010-10-02/news/os-anatomy-botched-conviction-20101002_1_kittsie-simmons-malenne-joseph-officer-jose-m-varela/4.
[7] http://articles.orlandosentinel.com/2011-02-17/news/os-witness-identification-motion-20110217.

III. Effect of Proposed Changes:

The bill creates a new section of Florida Statutes relating to eyewitness identifications in criminal cases. It is a comprehensive bill that sets forth specific procedures that law enforcement agencies must implement when conducting lineups.

The bill provides definitions of common terms relating to eyewitness identification procedures used in the law enforcement community.

Under the provisions of the bill, law enforcement must fulfill certain criteria in conducting a lineup, some criteria more detailed than others. However, the bill also provides for two alternative methods of conducting lineups. It also provides remedies should the requirements of the lineup procedure not be followed by the officer(s) conducting the lineup.

Procedures to be Followed
Prior to the lineup, officers are required to give the eyewitness five instructions. These are:

1) The perpetrator might or might not be in the lineup;
2) The lineup administrator does not know the suspect's identity;
3) The eyewitness should not feel compelled to make an identification;
4) It is as important to exclude innocent persons as it is to identify the perpetrator; and
5) The investigation will continue with or without an identification.

The eyewitness must be given a copy of these instructions. If he or she refuses to sign a document acknowledging receipt of the instructions, the lineup administrator is directed to sign it and make a notation of the eyewitness refusal.

An independent administrator must conduct the lineup. This is sometimes referred to as a "blind" administrator. The independent administrator is not participating in the investigation and does not know the identity of the suspect. This is one element of the scientific studies on eyewitness identification that is most agreed upon by the scholars in the area of study as being critical to untainted suspect identification.

Sequential presentation of individuals or photos is required. This means that one person or photo (depending on whether it is a live lineup or photo lineup) is presented to the eyewitness at a time, then removed before the next is presented in a predetermined order.

The bill requires that six photos or people be included in a lineup. The number of photos or people included in the lineup must be documented. The "fillers" (the five photos or people who are included in the lineup who are not suspects) should resemble the suspect and they should not be used more than once with a particular eyewitness. If a photo of the suspect is used in a photo lineup it should be a contemporary one. Information regarding any prior arrests or other involvement in the criminal justice system should not be made known to the witnesses viewing a lineup.

Witnesses confidence level of the identification, if one is made, must be documented. Witnesses must not be allowed to confer with one another before or during the identification procedure. No

one may be present during the identification procedure who knows the suspect's identity except counsel as required by law and the eyewitness.

If more than one eyewitness views a lineup, the suspect must be placed in a different position in the lineup for each witness and the eyewitness may not be told anything regarding the suspect's position in the lineup nor anything else that might influence the identification procedure. The eyewitness may not see any participants in a live lineup prior to the lineup being conducted. If persons in a lineup perform identifying speech, gestures or movements, all lineup participants must do them.

A video recording of a live lineup must be made. If this procedure is not practical an audio recording may be substituted for the video. If audio recording is not practical, the lineup may proceed and be documented by the lineup administrator. In any case where the video recording is not made, the reasons for the impracticality must be noted. The same requirement applies if audio recording is impractical. The results must be documented. The eyewitness must sign the results, or if the witness refuses the administrator shall sign. All of the persons present at the lineup must be noted along with the date, time, and place where the lineup is conducted. The sources of photos or persons being used and the photos themselves, or a photo or other visual recording of the participants in a live lineup must be made a part of the record.

Statements as to certainty of the identification ("confidence statements") or any other statements or words used by the eyewitness in any identification procedure must be recorded, by the means being utilized by the administrator.

Alternative Methods for Identification Procedures
The bill provides that the Criminal Justice Standards and Training Commission may specify and approve an alternative method of photo identification. Neutral administration, but not necessarily the utilization of an independent administrator is allowed. The procedure should prevent the administrator from knowing which photo is being presented to the eyewitness during the procedure. The use of a computer program or of a random, shuffled folder method of photo presentation is provided for.

Remedies as Consequence of not Following Statutory Procedures
The court may consider noncompliance with the statutory suspect identification procedures when deciding a motion to suppress the identification from being presented as evidence at trial.

The court may allow the jury to hear evidence of noncompliance in support of claims of eyewitness misidentification raised by the defendant.

The bill also provides that the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications. Jury instructions must be adopted by the Florida Supreme Court, therefore, this particular part of the bill will require action by the court after it is presented with a proposed instruction for consideration. Standard Jury Instructions for criminal cases are quite often proposed and adopted based upon the Legislature's revision of the criminal statutes, soon after the end of each legislative session. However, in the meantime an attorney could present his or her own proposed instruction to the trial court and it could be given to the jury. The trial court certainly has the

prerogative to give instructions outside the Standard Jury Instructions, however the court runs the risk of that issue being raised on appeal.

Education and Training
The Criminal Justice Standards and Training Commission, in consultation with the Florida Department of Law Enforcement, is required to develop educational materials and conduct training programs for law enforcement on the eyewitness identification procedures set forth in the bill.

The bill has a July 1, 2011 effective date.

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 use of lineups with eyewitnesses to crimes occurs on a limited basis in most law enforcement organizations. Nonetheless, smaller law enforcement agencies, in particular, may experience some fiscal impact from the implementation of the requirements of this bill.

Agencies that have few officers on a shift at any given time may have to call in additional officers anytime a lineup that requires an independent administrator is conducted due to the fact that all or most officers on the shift are a part of the investigation. An officer who has knowledge of the identification of a suspect would not be eligible to conduct the lineup under the provisions of the bill. It should be noted, however, that alternative methods of conducting eyewitness identification procedures are provided in the bill. The

alternative methods should allow the smaller agencies flexibility since an independent administrator is not required.
Additionally, a fiscal impact may result for many smaller agencies that are not equipped to videotape lineups conducted in the field as they do not have that capability in the agency's patrol cars.

Regarding specialized training, currently law enforcement training on eyewitness identification procedures in Florida, provided by the Criminal Justice Standards and Training Commission, occurs at the Basic Recruit Training Level. Some agencies have indicated that statewide training requirements are more costly than in-house training, therefore those agencies would experience a fiscal impact if statewide training on eyewitness identification procedures is required.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 1272
INTRODUCER:	Senator Wise
SUBJECT:	Educational Services in DJJ Programs
DATE:	March 23, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Pre-meeting**
2.			HE	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill provides that adult education GED test preparation courses and adult education career education courses may be offered as electives to high school level students who are being served in juvenile justice education programs under s. 1003.52(3)(a), F.S. These students must have a transition plan that does not include returning to public high school under the bill.

This bill substantially amends section 1003.52 of the Florida Statutes.

II. Present Situation:

Section 1003.52(3)(a), F.S., requires that the district school board of the county where a Department of Juvenile Justice (DJJ) residential or nonresidential care facility is located provide appropriate educational assessments, programs of instruction, and special education services as follows:

- The district school board shall make provisions for each student to participate in basic, career education, and exceptional student programs as appropriate.
- Students served in DJJ programs shall have access to the appropriate courses and instruction to prepare them for the GED test.
- Students participating in GED preparation programs shall be funded at the basic program cost factor for DJJ programs in the Florida Education Finance Program.
- Each program shall be conducted according to applicable law providing for the operation of public schools and rules of the State Board of Education.
- School districts shall provide the GED exit option for all juvenile justice programs.

Secondary students who meet the participation eligibility requirements pursuant to s. 1007.271, F. S., may dual enroll in adult postsecondary career education courses at a school district postsecondary program or state college. According to the Department of Education (DOE), DJJ students currently have access to secondary career and technical education courses as electives.[1]

III. Effect of Proposed Changes:

This bill provides that adult education GED test preparation courses and adult education career education courses may be offered as electives to high school level students who are being served in juvenile justice education programs under s. 1003.52(3)(a), F.S. These students must have a transition plan that does not include returning to public high school under the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DJJ, there is no fiscal impact.[2]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[1] DOE 2011 Legislative Bill Analysis HB 611 (companion to SB 1272), on file with the Senate Criminal Justice Committee.
[2] DJJ 2011 Agency Proposal Education, on file with the Senate Criminal Justice Committee.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	CS/SB 734
INTRODUCER:	Communications, Energy, and Public Utilities and Senator Wise
SUBJECT:	Assault or Battery on Utility Workers
DATE:	March 23, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Fav/CS**
2.	Erickson	Cannon	CJ	**Pre-Meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Currently, s. 784.07, F.S., provides for the reclassification of the misdemeanor or felony degree of specified assault and battery offenses when those offenses are knowingly committed against law enforcement officers, firefighters, and other specified persons engaged in the lawful performance of their duties. The effect of this reclassification is that the maximum penalty increases. The bill adds utility workers, a term defined in the bill, to the list of specified persons. Therefore, the felony or misdemeanor degree of certain assault and battery offenses would be reclassified if committed against a utility worker engaged in the lawful performance of his or her duties in the same manner as if those offenses were committed against a law enforcement officer or firefighter engaged in the lawful performance of his or her duties.

The bill takes effect July 1, 2011.

This bill substantially amends section 784.07 of the Florida Statutes.

II. Present Situation:

Section 784.07, F.S., enhances the penalties for assault or battery on the following types of employees or persons:

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

Section 784.07, F.S., applies whenever any person is charged with knowingly committing an assault or battery upon one of these persons while that person is engaged in the lawful performance of his or her duties. The reclassification of degree of the offense depends on the assault or battery offense charged:

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

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony. The maximum sentence for a second degree misdemeanor is 60 days in a county jail; for a first degree misdemeanor, it is 1 year in a county jail; for a third degree felony, it is 5-years state imprisonment; for a second degree felony, it is 15-years state imprisonment; and for a first degree felony, it is generally 30-years state imprisonment.[1] Fines may also be imposed, and these fines escalate based on the degree of the offense.[2] The offense severity ranking level of applicable reclassified felony offenses is as

[1] s. 775.082, F.S.
[2] s. 775.083, F.S.

follows: reclassified battery: Level 4; reclassified aggravated assault: Level 6; and reclassified aggravated battery: Level 7.[3]

Additionally, s. 784.07, F.S., provides that, when a person is found guilty under the statute, adjudication of guilt or imposition of sentence cannot be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release prior to serving the minimum sentence.

III. Effect of Proposed Changes:

Currently, s. 784.07, F.S., provides for the reclassification of the misdemeanor or felony degree of specified assault and battery offenses when those offenses are knowingly committed against law enforcement officers, firefighters, and other specified persons engaged in the lawful performance of their duties. The effect of this reclassification is that the maximum penalty increases.

Section 1 of the bill amends s. 784.07, F.S., to add utility workers to the list of specified persons. Therefore, the felony or misdemeanor degree of certain assault and battery offenses would be reclassified if committed against a utility worker engaged in the lawful performance of his or her duties in the same manner as if those offenses were committed against a law enforcement officer or firefighter engaged in the lawful performance of his or her duties.

The reclassification occurs as follows:

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

The bill defines the term "utility worker" to mean "any person employed by an entity that owns, operates, leases, or controls any plant, property, or facility for the generation, transmission, manufacture, production, supply, distribution, sale, storage, conveyance, delivery, or furnishing to or for the public of electricity, natural or manufactured gas, water, steam, sewage, or telephone service, including two or more utilities rendering joint service."

Section 2 makes conforming changes to s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code.

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have an insignificant prison bed impact (low volume).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Communications, Energy, and Public Utilities on March 7, 2011:
Makes a technical change to the definition to include all types of communications utilities.

B. Amendments:

None.

754142

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete line 42
and insert:
any other person to view, copy, or publish such records.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 416
INTRODUCER:	Senator Bogdanoff
SUBJECT:	Public Records
DATE:	March 23, 2011
REVISED:	

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

I. Summary:

This bill creates a public record exemption from public record requirements for photographs and video and audio recordings that depict or record the killing of a person. (The exemption is identical to the public record exemption in s. 406.135, F.S., relating to photographs and video and audio recordings of an autopsy held by a medical examiner.) The exemption is subject to the Open Government Sunset Review Act and as such, will be repealed on October 2, 2016 unless reviewed and reenacted by the Legislature.

The exemption permits a surviving spouse to view, listen, and copy these photographs and video and audio recordings that depict or record the killing of a person. If there is no surviving spouse, then the deceased's surviving parents may view and copy them. If there are no surviving parents, then an adult child of the deceased may view and copy them. The surviving relative who has the authority to view and copy these records is authorized to designate in writing an agent to obtain them.

Additionally, federal, state, and local governmental agencies, upon written request, may have access to these records in the performance of their duties. Other than these exceptions, the custodian is prohibited from releasing the records to any other person not authorized under the exemption without a court order. Knowingly violating these provisions is a third degree felony.

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

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

During the 2001 Legislative Session, the Legislature enacted s. 406.135, F.S., which provided a public records exemption for photographs, video and audio recordings of an autopsy held by a medical examiner.[1] These photographs, video and audio recordings are confidential and exempt from public disclosure except that a surviving spouse and other enumerated family members may obtain them.[2] In addition to the family members, local governmental entities and state and federal agencies may have access to these autopsy records by requesting in writing to view and copy them when such records are necessary in furtherance of that governmental agency's duties. But other than these exceptions, the custodian of the photographs or video and audio recordings is prohibited from releasing them to any other person not authorized under the exemption without a court order.

The Office of the Attorney General has issued a couple of opinions relating to the exemption for autopsy photographs, video and audio recordings. In one of the opinions, the Attorney General concluded that a medical examiner is authorized under s. 406.135, F.S., to show autopsy photographs or videotapes to public agencies for purposes of professional training or educational efforts if the identity of the deceased is protected, and the agency has made a written request.[3]

Another opinion reiterated this finding and expressly concluded that these photographs or videotapes may not be shown to private entities unless a court has made the requisite finding that good cause exists and the family of the deceased has received the proper notification and opportunity to be heard at any hearing on the matter.[4]

The Attorney General Opinion, citing the Fifth District Court of Appeal case, *In Campus Communications, Inc., v. Earnhard*,[5] concluded that the court can allow any person access to the autopsy photographs or videotapes when good cause is established, after evaluating the following criteria:

- whether disclosure is necessary to assess governmental performance;
- the seriousness of the intrusion on the deceased's family's right to privacy;
- whether disclosure is the least intrusive means available; and
- the availability of similar information in other public records.[6]

In *Earnhardt*, the Fifth District Court of Appeal upheld the law exempting autopsy photographs against an unconstitutional overbreath challenge brought by a newspaper. The court went on to hold that the newspaper had not established good cause to view or copy the photographs and that the exemption applied retroactively.[7] The court found that s. 406.135, F.S., met constitutional

[1] Chapter 2001-1, s. 1, L.O.F.
[2] Chapter 2003-184, s. 1, L.O.F.
[3] 2001-47 Fla. Op. Att'y Gen. 4 (2001).
[4] 2003-25 Fla. Op. Att'y Gen. (2003).
[5] 821 So.2d 388 (Fla. 5th DCA 2002), *review dismissed* 845 So.2d 894, *review denied* 848 So.2d 1153, *certiorari denied* 540 U.S. 1049.
[6] 2003-25 Fla. Op. Att'y Gen. 2, 3 (2003).
[7] 821 So.2d 388 (Fla. 5th DCA 2002), *review dismissed* 845 So.2d 894, *review denied* 848 So.2d 1153, *certiorari denied* 540 U.S. 1049.

and statutory requirements that the exemption is no broader than necessary to meet its public purpose, even though not all autopsy recordings are graphic and result in trauma when viewed. The court also found that the Legislature stated with specificity the public necessity justifying the exemption in ch. 2001-1, L.O.F.[8]

Furthermore, the court found the statute provides for disclosure of written autopsy reports, allows for the publication of exempted records upon good cause if the requisite statutory criterion is met, and is supported by a thoroughly articulated public policy to protect against trauma that is likely to result upon disclosure to the public.[9]

The court concluded that it is the prerogative of the Legislature to determine that autopsy photographs are private and need to be protected and that this privacy right prevails over the right to inspect and copy public records. The court also stated that its function is to determine whether the Legislature made this determination in a constitutional manner. Finding that the statute was constitutionally enacted and that it was properly applied to the facts in this case, the Fifth District Court of Appeal affirmed the lower court's finding of constitutionality.[10]

The Fifth District Court of Appeal certified the question of constitutionality to the Florida Supreme Court. On July 1, 2003, the Florida Supreme Court, per curiam, denied review of this case, leaving in place the appellate court's holding.[11]

III. Effect of Proposed Changes:

This bill creates a public record exemption from public record requirements for photographs and video and audio recordings that depict or record the killing of a person. The exemption is identical to the public record exemption in s. 406.135, F.S., relating to photographs and video and audio recordings of an autopsy held by a medical examiner.

Section 1 of the bill provides as follows:

- Defines "killing of a person" to mean "all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death."

- Permits a surviving spouse to view, listen, and copy these photographs and video and audio recordings. If there is no surviving spouse, then the deceased's surviving parents may view, listen, and copy them. If there are no surviving parents, then an adult child of the deceased may view, listen, and copy them. The surviving relative who has the authority to view, listen, and copy these records is authorized to designate in writing an agent to obtain them.

- Allows access to these records by federal, state, and local governmental agencies, upon written request, in the performance of their duties. Other than these exceptions, the custodian

[8] *Id.* at 395.
[9] *Id.* at 394.
[10] *Id.* at 403.
[11] 848 So.2d 1153 (Fla. 2003).

is prohibited from releasing the records to any other person not authorized under the exemption without a court order.

- Allows these other persons who are not covered by the exceptions above to have access to the photos and recordings only with a court order upon a showing of good cause, and limited by any restrictions or stipulations that the court deems appropriate. In determining good cause, the court must consider the following:

  - whether such disclosure is necessary for the public evaluation of governmental performance;
  - the seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
  - the availability of similar information in other public records, regardless of form.

- Requires that specified family members are given reasonable notice of a petition for access to photographs, video and audio recordings that depicts or records the killing of a person, as well as a copy of the petition and the opportunity to be heard. Such access, if granted by the court, must be performed under the direct supervision of the custodian of the record or his or her designee.

- Provides that it is a third degree felony for any custodian of a photo, video or audio recording that depicts or records the killing of a person to willingly and knowingly violate the provisions of this section. It also provides a third degree felony penalty for anyone who willingly and knowingly violates a court order issued under this section. (A third degree felony is punishable by imprisonment not to exceed 5 years and/or a fine up to $5,000.)

- Provides that criminal and administrative proceedings are exempt from this section, but shall be subject to all other provisions of ch. 119, F.S.; however, nothing prohibits a court in a criminal or administrative proceeding from restricting the disclosure of a killing, crime scene, or similar photograph or video or audio recordings.

- Provides for retroactive application of the exemption because it is remedial in nature.

- Makes the exemption subject to the Open Government Sunset Review Act and as such, repeals it on October 2, 2016 unless reviewed and reenacted by the Legislature.

Section 2 of the bill provides a similar public necessity statement justifying the exemption as was used when creating the autopsy photographs and recordings exemption. The justification statement is as follows:

> … photographs and video and audio recordings that depict or record the killing of any person render a visual or aural representation of the deceased in graphic and often disturbing fashion in the final moments of life (bruised, bloodied, broken, bullet wounds, cut open, dismembered, or decapitated) that, if heard, viewed, copied or publicized on the World Wide Web could result in continuous trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased, as well as injury to the memory of the deceased. As such, it is a public necessity to make such photos and video and audio

> recordings confidential and exempt. Further . . . there continue to be other types of available information, such as crime scene reports, that are less intrusive and injurious to the immediate family of the deceased and continue to provide for public oversight.

Section 3 of the bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

In *In Campus Communications, Inc., v. Earnhardt*,[12] the Fifth District Court of Appeal upheld a similar law exempting autopsy photographs and video and audio recordings against an unconstitutional overbreath challenge brought by a newspaper (see details in Present Situation). The court went on to certify the question of constitutionality to the Florida Supreme Court. On July 1, 2003, the Florida Supreme Court, per curiam, denied review of this case, leaving in place the appellate court's holding.[13]

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 416 was on the March 2nd Criminal Justice Impact Conference agenda and the fiscal impact was deemed insignificant because of low volume and because of the unranked third degree felonies.

VI. Technical Deficiencies:

None.

[12] *Id.*
[13] *Id.*

VII. Related Issues:

The First Amendment Foundation has expressed concerns with the bill, primarily that it will result in restricted oversight of governmental action and less accountability:

> As you may recall, in January of 2006, Martin Lee Anderson, a resident of the Bay County Boot Camp, which was operated by the Bay County Sheriff's Office, died a day after entering boot camp from suffocation. A videotape of the events surrounding his death, specifically the activities of boot camp employees, resulted in the Legislature closing boot camps, but only after the news media and others made the video public. Also, in 1990, the execution of Jesse Joseph Tafero was botched causing his head to catch fire. Videos or photos of this event would be protected under this bill, also limiting oversight. Further, under the bill, traffic stops by law enforcement officers which end up with the officer, driver or other passengers being killed would be protected, making it more difficult to determine what really resulted in any of their deaths.[14]
>
> While we do not wish to disparage government officers or employees, experience has shown us that private citizens and the news media are sometimes required to ensure that bad actors are caught and punished or policies changed. This bill restricts that opportunity by requiring activists and the media to have to go to court to view or copy the records, to rely upon a judge to grant them their right to view or copy the record, and by requiring requestors to have to pay court costs and fees to exercise a constitutional right of access.[15]

VIII. Additional Information:

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

None.

B. Amendments:

None.

[14] Letter from the First Amendment Foundation to Senator Bogdanoff Re SB 416, dated February 25, 2011, on file with the Senate Criminal Justice Committee.
[15] *Id.*

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 458
INTRODUCER:	Senator Hill
SUBJECT:	Administrative Expunction of Arrest Records
DATE:	March 23, 2011 REVISED:

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

I. Summary:

This bill deletes the language making the decision of the arresting law enforcement agency to apply to the Florida Department of Law Enforcement (FDLE) for administrative expunction discretionary. It also changes the requirement that the application for administrative expunction initiated by the subject of the record (or the subject's parents) must be supported by "documentation from the department stating that the arrest was contrary to law or by mistake."

This bill substantially amends section 943.0581 of the Florida Statutes.

II. Present Situation:

The FDLE is authorized to provide by rule for the administrative expunction of any nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake.[1] A law enforcement agency must apply to FDLE in the manner prescribed by rule for the administrative expunction of any nonjudicial record of any arrest of a minor or an adult who is subsequently determined by the agency, at its discretion, or by the final order of a court of competent jurisdiction, to have been arrested contrary to law or by mistake.

An adult or, in the case of a minor child, the parent or legal guardian of the minor child, may apply to FDLE in the manner prescribed by rule for the administrative expunction of any nonjudicial record of an arrest alleged to have been made contrary to law or by mistake, provided that the application is supported by the endorsement of the head of the arresting agency or the state attorney of the judicial circuit in which the arrest occurred.

[1] Section 943.0581, F.S.

An application for administrative expunction must be on the submitting agency's letterhead and be signed by the head of the submitting agency. The application must include the date and time of the arrest, the name of the person arrested, the offender-based tracking system number, and the crime or crimes charged. No application or endorsement made under s. 943.0581, F.S., is admissible as evidence in any judicial or administrative proceeding, nor is to be construed as an admission of liability in connection with an arrest.[2]

III. Effect of Proposed Changes:

This bill deletes the language making the decision of the arresting law enforcement agency to apply to the FDLE for administrative expunction discretionary. It clarifies that the application for administrative expunction initiated by the law enforcement agency must be on the agency's letterhead and signed by the head of the submitting agency or by his or her designee.

It also changes the requirement that the application for administrative expunction initiated by the subject of the record (or the subject's parents) must be supported by "documentation from the department stating that the arrest was contrary to law or by mistake."(Currently, the statute requires an endorsement from the head of the arresting agency or the state attorney.)

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 potential exists for a positive fiscal impact to the degree that the bill helps more people find jobs because they will no longer have a record for a mistaken arrest.

[2] *Id.*

C. Government Sector Impact:

According to the FDLE, the department receives 275 cases per year.[3] It will need additional resources to adequately conduct investigations and trial-type hearings into the legitimacy of the arrests by the other law enforcement agencies. Specifically, it estimates the following fiscal impact:

	FY 11 - 12	FY 12 - 13	FY 13 – 14	
2 Positions -Senior Attorney and Criminal Justice Customer Service Specialist	$116,488	$116,488	$116,488	Salary & Benefits
Standard Expense for 2 Positions	$20,906	$13,110	$13,110	Expenses
Standard HR Services for 2 Positions	$712	$712	$712	Human Resources Services
TOTAL 2 Positions	**$138,106**	**$130,310**	**$130,310**	

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the FDLE, this bill will put it in an awkward position of having to second-guess a local law enforcement agency's initial decision as to whether the arrest was a mistake or contrary to law. It will also require the FDLE to investigate all situations in which there is an allegation of mistaken arrest.[4]

VIII. Additional Information:

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

None.

B. Amendments:

None.

[3] Florida Department of Law Enforcement, Bill Analysis for SB 458, on file with the Senate Criminal Justice Committee.
[4] *Id.*

210510

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Walk in Their Shoes Act."

Section 2. Subsection (2) of section 90.404, Florida Statutes, is amended to read:

90.404 Character evidence; when admissible.—

(2) OTHER CRIMES, WRONGS, OR ACTS.—

(a) Similar fact evidence of other crimes, wrongs, or acts

is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.

(b)1. In a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible~~,~~ and may be considered for its bearing on any matter to which it is relevant.

2. For the purposes of this paragraph, the term "child molestation" means conduct proscribed by s. 787.025(2)(c), s. 794.011, excluding s. 794.011(10), s. 794.05, s. 796.03, s. 796.035, s. 796.045, s. 800.04, s. 827.071, ~~or~~ s. 847.0135(5), s. 847.0145, or s. 985.701(1) when committed against a person 16 years of age or younger.

(c)1. In a criminal case in which the defendant is charged with a sexual offense, evidence of the defendant's commission of other crimes, wrongs, or acts involving a sexual offense is admissible and may be considered for its bearing on any matter to which it is relevant.

2. For the purposes of this paragraph, the term "sexual offense" means conduct proscribed by s. 787.025(2)(c), s. 794.011, excluding s. 794.011(10), s. 794.05, s. 796.03, s. 796.035, s. 796.045, s. 825.1025(2)(b), s. 827.071, s. 847.0135(5), s. 847.0145, or s. 985.701(1).

(d)~~(c)~~1. When the state in a criminal action intends to offer evidence of other criminal offenses under paragraph (a), ~~or~~ paragraph (b), or paragraph (c), no fewer than 10 days before

trial, the state shall furnish to the defendant or to the defendant's counsel a written statement of the acts or offenses it intends to offer, describing them with the particularity required of an indictment or information. No notice is required for evidence of offenses used for impeachment or on rebuttal.

2. When the evidence is admitted, the court shall, if requested, charge the jury on the limited purpose for which the evidence is received and is to be considered. After the close of the evidence, the jury shall be instructed on the limited purpose for which the evidence was received and that the defendant cannot be convicted for a charge not included in the indictment or information.

Section 3. Prohibition on reproduction of child pornography.—

(1) In a criminal proceeding, any property or material that portrays sexual performance by a child as defined in s. 827.071, Florida Statutes, or constitutes child pornography as defined in s. 847.001, Florida Statutes, must remain secured or locked in the care, custody, and control of a law enforcement agency, the state attorney, or the court.

(2) Notwithstanding any law or rule of court, a court shall deny, in a criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that portrays sexual performance by a child or constitutes child pornography so long as the state attorney makes the property or material reasonably available to the defendant.

(3) For purposes of this section, property or material is deemed to be reasonably available to the defendant if the state

attorney provides ample opportunity at a designated facility for the inspection, viewing, and examination of the property or material that portrays sexual performance by a child or constitutes child pornography by the defendant, his or her attorney, or any individual whom the defendant uses as an expert during the discovery process or at a court proceeding.

Section 4. Subsection (2) of section 395.1021, Florida Statutes, is amended to read:

395.1021 Treatment of sexual assault victims.—Any licensed facility which provides emergency room services shall arrange for the rendering of appropriate medical attention and treatment of victims of sexual assault through:

(2) The ~~administration of medical examinations, tests, and analyses required by law enforcement personnel in the~~ gathering of forensic medical evidence required for investigation and prosecution from a victim who has reported a sexual battery to a law enforcement agency or who requests that such evidence be gathered for a possible future report.

Such licensed facility shall also arrange for the protection of the victim's anonymity while complying with the laws of this state and may encourage the victim to notify law enforcement personnel and to cooperate with them in apprehending the suspect.

Section 5. Subsection (17) is added to section 775.15, Florida Statutes, to read:

775.15 Time limitations; general time limitations; exceptions.—

(17) In addition to the time periods prescribed in this

section, a prosecution for video voyeurism in violation of s. 810.145 may be commenced within 1 year after the date on which the victim of video voyeurism obtains actual knowledge of the existence of such a recording or the date on which the recording is confiscated by a law enforcement agency, whichever occurs first. Any dissemination of such a recording before the victim obtains actual knowledge thereof or before its confiscation by a law enforcement agency does not affect any provision of this subsection.

Section 6. Subsection (1) of section 794.052, Florida Statutes, is amended to read:

794.052 Sexual battery; notification of victim's rights and services.—

(1) A law enforcement officer who investigates an alleged sexual battery shall:

(a) Assist the victim in obtaining medical treatment, if medical treatment is necessary as a result of the alleged incident, a forensic examination, and advocacy and crisis-intervention services from a certified rape crisis center and provide or arrange for transportation to the appropriate facility.

(b) Advise the victim that he or she may contact a certified rape crisis center from which the victim may receive services.

(c) Prior to submitting a final report, permit the victim to review the final report and provide a statement as to the accuracy of the final report.

Section 7. Section 794.056, Florida Statutes, is amended to read:

794.056 Rape Crisis Program Trust Fund.—

(1) The Rape Crisis Program Trust Fund is created within the Department of Health for the purpose of providing funds for rape crisis centers in this state. Trust fund moneys shall be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided ~~defined~~ in s. 775.21(6) and (10)(a), (b), and (g), s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s. 784.083, s. 784.085, s. 787.01(3), s. 787.02(3), s. 787.025, s. 787.06, s. 787.07, ~~or~~ s. 794.011, s. 794.05, s. 794.08, s. 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, s. 796.06, s. 796.07(2)(a)-(d) and (i), s. 800.03, s. 800.04, s. 810.14, s. 810.145, s. 812.135, s. 817.025, s. 825.102, s. 825.1025, s. 827.071, s. 836.10, s. 847.0133, s. 847.0135(2), s. 847.0137, s. 847.0145, s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c), or s. 985.701(1). Funds credited to the trust fund also shall include revenues provided by law, moneys appropriated by the Legislature, and grants from public or private entities.

(2) The Department of Health shall establish by rule criteria consistent with the provisions of s. 794.055(3)(a) for distributing moneys from the trust fund to rape crisis centers.

Section 8. Section 938.085, Florida Statutes, is amended to read:

938.085 Additional cost to fund rape crisis centers.—In

addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 775.21(6) and (10)(a), (b), and (g), s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s. 784.083, s. 784.085, s. 787.01(3), s. 787.02(3), 787.025, s. 787.06, s. 787.07, ~~or~~ s. 794.011, s. 794.05, s. 794.08, s. 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, s. 796.06, s. 796.07(2)(a)-(d) and (i), s. 800.03, s. 800.04, s. 810.14, s. 810.145, s. 812.135, s. 817.025, s. 825.102, s. 825.1025, s. 827.071, s. 836.10, s. 847.0133, s. 847.0135(2), s. 847.0137, s. 847.0145, s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c), or s. 985.701(1), the court shall impose a surcharge of $151. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The sum of $150 of the surcharge shall be deposited into the Rape Crisis Program Trust Fund established within the Department of Health by chapter 2003-140, Laws of Florida. The clerk of the court shall retain $1 of each surcharge that the clerk of the court collects as a service charge of the clerk's office.

Section 9. For the purpose of incorporating the amendment made by this act to section 794.056, Florida Statutes, in a reference thereto, paragraph (a) of subsection (21) of section 20.435, Florida Statutes, is reenacted to read:

20.435 Department of Health; trust funds.—The following trust funds shall be administered by the Department of Health:

(21) Rape Crisis Program Trust Fund.

(a) Funds to be credited to and uses of the trust fund

shall be administered in accordance with the provisions of s. 794.056.

Section 10. For the purpose of incorporating the amendment made by this act to section 938.085, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 794.055, Florida Statutes, is reenacted to read:

794.055 Access to services for victims of sexual battery.—

(3)

(b) Funds received under s. 938.085 shall be used to provide sexual battery recovery services to victims and their families. Funds shall be distributed to rape crisis centers based on an allocation formula that takes into account the population and rural characteristics of each county. No more than 15 percent of the funds shall be used by the statewide nonprofit association for statewide initiatives. No more than 5 percent of the funds may be used by the department for administrative costs.

Section 11. Section 960.003, Florida Statutes, is amended to read:

960.003 Hepatitis and HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.—

(1) LEGISLATIVE INTENT.—The Legislature finds that a victim of a criminal offense which involves the transmission of body fluids, or which involves certain sexual offenses in which the victim is a minor, disabled adult, or elderly person, is entitled to know at the earliest possible opportunity whether the person charged with or alleged by petition for delinquency to have committed the offense has tested positive for hepatitis

or human immunodeficiency virus (HIV) infection. The Legislature finds that to deny victims access to hepatitis and HIV test results causes unnecessary mental anguish in persons who have already suffered trauma. The Legislature further finds that since medical science now recognizes that early diagnosis is a critical factor in the treatment of hepatitis and HIV infection, both the victim and the person charged with or alleged by petition for delinquency to have committed the offense benefit from prompt disclosure of hepatitis and HIV test results.

(2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY PETITION FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES.—

(a) In any case in which a person has been charged by information or indictment with or alleged by petition for delinquency to have committed any offense enumerated in s. 775.0877(1)(a)-(n), which involves the transmission of body fluids from one person to another, upon request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is a minor, the court shall order such person to undergo hepatitis and HIV testing within 48 hours after ~~of~~ the information or indictment is filed ~~court order~~. In the event the victim or, if the victim is a minor, the victim's parent or legal guardian, requests hepatitis and HIV testing after 48 hours have elapsed from the filing of the indictment or information, the testing shall be done within 48 hours after the request.

(b) However, when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) is under the age of 18 at the time the offense was committed or when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) or s. 825.1025 is a disabled

adult or elderly person as defined in s. 825.1025 regardless of whether the offense involves the transmission of bodily fluids from one person to another, then upon the request of the victim or the victim's legal guardian, or of the parent or legal guardian, the court shall order such person to undergo hepatitis and HIV testing within 48 hours after ~~of~~ the information or indictment is filed ~~court order~~. In the event the victim or, if the victim is a minor, the victim's parent or legal guardian, requests hepatitis and HIV testing after 48 hours have elapsed from the filing of the indictment or information, the testing shall be done within 48 hours after the request. The testing shall be performed under the direction of the Department of Health in accordance with s. 381.004. The results of a hepatitis and ~~an~~ HIV test performed on a defendant or juvenile offender pursuant to this subsection shall not be admissible in any criminal or juvenile proceeding arising out of the alleged offense.

(c) If medically appropriate, followup HIV testing shall be provided when testing has been ordered under paragraph (a) or paragraph (b). The medical propriety of followup HIV testing shall be based upon a determination by a physician and does not require an additional court order. Notification to the victim, or to the victim's parent or legal guardian, and to the defendant of the results of each followup test shall made be as soon as practicable in accordance with this section.

(3) DISCLOSURE OF RESULTS.—

(a) The results of the test shall be disclosed no later than 2 weeks after the court receives such results, under the direction of the Department of Health, to the person charged

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with or alleged by petition for delinquency to have committed or to the person convicted of or adjudicated delinquent for any offense enumerated in s. 775.0877(1)(a)-(n), which involves the transmission of body fluids from one person to another, and, upon request, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, and to public health agencies pursuant to s. 775.0877. If the alleged offender is a juvenile, the test results shall also be disclosed to the parent or guardian. When the victim is a victim as described in paragraph (2)(b), the test results must also be disclosed no later than 2 weeks after the court receives such results, to the person charged with or alleged by petition for delinquency to have committed or to the person convicted of or adjudicated delinquent for any offense enumerated in s. 775.0877(1)(a)-(n), or s. 825.1025 regardless of whether the offense involves the transmission of bodily fluids from one person to another, and, upon request, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim, and to public health agencies pursuant to s. 775.0877. Otherwise, hepatitis and HIV test results obtained pursuant to this section are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall not be disclosed to any other person except as expressly authorized by law or court order.

(b) At the time that the results are disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of a victim if the victim is a minor, the same immediate opportunity for face-to-face counseling which must be made available under s. 381.004 to those who undergo hepatitis

and HIV testing shall also be afforded to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor.

(4) POSTCONVICTION TESTING.—If, for any reason, the testing requested under subsection (2) has not been undertaken, then upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the court shall order the offender to undergo hepatitis and HIV testing following conviction or delinquency adjudication. The testing shall be performed under the direction of the Department of Health, and the results shall be disclosed in accordance with the provisions of subsection (3).

(5) EXCEPTIONS.—~~The provisions of~~ Subsections (2) and (4) do not apply if:

(a) The person charged with or convicted of or alleged by petition for delinquency to have committed or been adjudicated delinquent for an offense described in subsection (2) has undergone hepatitis and HIV testing voluntarily or pursuant to procedures established in s. 381.004(3)(h)6. or s. 951.27, or any other applicable law or rule providing for hepatitis and HIV testing of criminal defendants, inmates, or juvenile offenders, subsequent to his or her arrest, conviction, or delinquency adjudication for the offense for which he or she was charged or alleged by petition for delinquency to have committed; and

(b) The results of such hepatitis and HIV testing have been furnished to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor.

(6) TESTING DURING INCARCERATION, DETENTION, OR PLACEMENT; DISCLOSURE.—In any case in which a person convicted of or

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adjudicated delinquent for an offense described in subsection (2) has not been tested under subsection (2), but undergoes hepatitis and HIV testing during his or her incarceration, detention, or placement, the results of the initial hepatitis and HIV testing shall be disclosed in accordance with ~~the provisions of~~ subsection (3). Except as otherwise requested by the victim or the victim's legal guardian, or the parent or guardian of the victim if the victim is a minor, if the initial test is conducted within the first year of the imprisonment, detention, or placement, the request for disclosure shall be considered a standing request for any subsequent hepatitis and HIV test results obtained within 1 year after the initial hepatitis and HIV test are performed, and need not be repeated for each test administration. Where the inmate or juvenile offender has previously been tested pursuant to subsection (2) the request for disclosure under this subsection shall be considered a standing request for subsequent hepatitis and HIV results conducted within 1 year of the test performed pursuant to subsection (2). If the hepatitis and HIV testing is performed by an agency other than the Department of Health, that agency shall be responsible for forwarding the test results to the Department of Health for disclosure in accordance with the provisions of subsection (3). This subsection shall not be limited to results of hepatitis and HIV tests administered subsequent to June 27, 1990, but shall also apply to the results of all hepatitis and HIV tests performed on inmates convicted of or juvenile offenders adjudicated delinquent for sex offenses as described in subsection (2) during their incarceration, detention, or placement prior to June 27, 1990.

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Section 12. Section 960.198, Florida Statutes, is amended to read:

960.198 Relocation assistance for victims of domestic violence and sexual violence.—

(1) Notwithstanding the criteria set forth in s. 960.13 for crime victim compensation awards, the department may award a one-time payment of up to $1,500 on any one claim and a lifetime maximum of $3,000 to a victim of domestic violence who needs immediate assistance to escape from a domestic violence environment or to a victim of sexual violence who reasonably fears for her or his safety.

(2) In order for an award to be granted to a victim for relocation assistance:

(a) There must be proof that a domestic violence or sexual violence offense was committed;

(b) The domestic violence or sexual violence offense must be reported to the proper authorities;

(c) The victim's need for assistance must be certified by a certified domestic violence center or a certified rape crisis center in this state; and

(d) The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.

Section 13. Paragraph (n) of subsection (2) of section 1003.42, Florida Statutes, is amended to read:

1003.42 Required instruction.—

(2) Members of the instructional staff of the public schools, subject to the rules of the State Board of Education

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and the district school board, shall teach efficiently and faithfully, using the books and materials required that meet the highest standards for professionalism and historic accuracy, following the prescribed courses of study, and employing approved methods of instruction, the following:

(n) Comprehensive health education that addresses concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury prevention and safety; Internet safety; nutrition; personal health; prevention and control of disease; and substance use and abuse. The health education curriculum for students in grades 7 through 12 shall include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse.

The State Board of Education is encouraged to adopt standards and pursue assessment of the requirements of this subsection.

Section 14. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to sexual offenses; providing a short title; amending s. 90.404, F.S.; revising offenses that are considered "child molestation" for purposes of admitting evidence of other crimes, wrongs, or acts in a criminal case involving child molestation; providing for admission of evidence of other crimes, wrongs, or acts in cases involving a sexual offense; defining the term "sexual offense"; requiring certain property or material that is used in a criminal proceeding to remain in the care, custody, and control of the law enforcement agency, the state attorney, or the court; prohibiting the reproduction of such property or material by the defendant when specified criteria are met by the state attorney; permitting access to the materials by the defendant; amending s. 395.1021, F.S.; requiring a licensed facility that provides emergency room services to arrange for the gathering of forensic medical evidence required for investigation and prosecution from a victim who has reported a sexual battery to a law enforcement agency or who requests that such evidence be gathered for a possible future report; amending s. 775.15, F.S.; providing that a prosecution for video voyeurism in violation of specified provisions may, in addition to existing time periods, be commenced within 1 year after the victim of video voyeurism obtains actual knowledge of the existence of such a recording or the

recording is confiscated by a law enforcement agency, whichever occurs first; providing that dissemination of a recording before such knowledge or confiscation does not affect such a time period; amending s. 794.052, F.S.; requiring a law enforcement officer to provide or arrange for transportation of a victim of sexual battery to an appropriate facility for medical treatment or forensic examination; providing for a review of a police officer's final report by a victim and an opportunity for a statement by a victim; amending ss. 794.056 and 938.085, F.S.; requiring that an additional court cost or surcharge be assessed against a defendant who pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, certain criminal offenses; providing for proceeds of the additional court cost or surcharge to be deposited into the Rape Crisis Program Trust Fund; reenacting s. 20.435(21)(a), F.S., relating to the Rape Crisis Program Trust Fund, to incorporate the amendment made to s. 794.056, F.S., in a reference thereto; reenacting s. 794.055(3)(b), F.S., relating to access to services for victims of sexual battery, to incorporate the amendment made to s. 938.085, F.S., in a reference thereto; amending s. 960.003, F.S.; providing for hepatitis testing of persons charged with certain offenses; amending s. 960.198, F.S.; authorizing relocation assistance awards to certain victims of sexual violence; amending s. 1003.42, F.S.; requiring that public schools provide comprehensive

477 health education that addresses concepts of Internet
478 safety; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 488
INTRODUCER:	Senator Fasano
SUBJECT:	Sexual Offenses
DATE:	March 11, 2011
REVISED:	

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

I. Summary:

Senate Bill 488 addresses several issues relating to victims of sexual violence and the criminal prosecution of such offenses.

The bill amends the Evidence Code to expand the admissibility of collateral crime or "similar fact" evidence in criminal prosecutions of crimes "of a sexual nature."

It prohibits a court from granting a request of a defendant in a criminal proceeding for permission to duplicate or copy material depicting sexual performance by a child or child pornography as long as the state attorney makes the material reasonably available to the defendant for inspection.

The bill requires licensed facilities providing emergency room services to gather forensic medical evidence from victims who have reported a sexual battery to a law enforcement agency or upon their request for purposes of filing a report in the future.

The bill also amends the statute of limitations for video voyeurism to authorize commencement of prosecutions within one year from either the date upon which the victim learns of the existence of the video recording or from the date the recording is confiscated by law enforcement, whichever occurs first.

The bill adds crimes to the list of offenses for which an additional $151 dollar surcharge will be assessed against a defendant in order to fund the Rape Crisis Program Trust Fund.

Further, the bill requires the court, upon a victim's request, to order a defendant to undergo HIV testing within 48 hours of the filing of an indictment or information either: 1) when the defendant is charged with a specified sexual offense and the victim is a minor, or an elderly person or disabled adult, regardless of whether it involved the transmission of body fluids; or 2) when the defendant is charged with a specified crime that involves the transmission of body fluids from one person to another.

The bill also provides that victims of sexual violence may receive monetary relocation assistance from the Department of Legal Affairs, and that public schools must include Internet safety within health education curriculum.

This bill substantially amends the following sections of the Florida Statutes: 90.404, 395.1021, 775.15, 794.056, 938.085, 960.003, 960.198, and 1003.42. It creates an undesignated new section of statute. The bill reenacts section 20.435(21)(a) and section 794.055(3)(b), Florida Statutes, to incorporate references to sections of the statutes amended by the bill.

II. Present Situation:

Evidence of Other Crimes Wrongs or Acts
Section 90.404(2)(a), F.S., is the general provision of the Evidence Code regarding the admission of "similar fact" or collateral crime evidence in criminal proceedings. It provides:

> (a) Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.

Under this provision, evidence of other crimes or actions (also called "collateral crime" or "similar fact" evidence) is admissible when it is relevant to a matter that is at issue in a trial. Such evidence is not admissible, however, if it is only relevant to show a defendant's propensity to commit such crimes or other wrongful acts.

This section is a codification of standard of admissibility announced by the Florida Supreme Court in *Williams v. State*.[1] Under this standard, "relevant evidence will not be excluded merely because it relates to similar facts which point to the commission of a separate crime. The test of admissibility is relevancy. The test of inadmissibility is a lack of relevancy."[2]

If the identity of the perpetrator is an issue at trial, then a "fingerprint" type of similarity between the other crimes or wrongs and the charged offense are necessary because without such similarity the evidence is prejudicial to the defendant, but doesn't necessarily prove the defendant actually committed the crime charged.[3] When identity is not disputed, finer points of similarity are not

[1] *Williams v. State*, 110 So. 2d 654 (Fla. 1959).
[2] *Id*. at 659-660.
[3] See, *State v. Savino*, 567 So.2d 892 (Fla. 1990). "When the purported relevancy of past crimes is to identify the perpetrator of the crime being tried, we have required a close similarity of facts, a unique or "fingerprint" type of information, for the evidence to be relevant."

required to establish the relevance of collateral crime evidence to prove other issues such as absence of mistake, plan, opportunity, or preparation.

Additionally, all forms of relevant evidence are scrutinized under s. 90.403, F.S., which precludes the admission of relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice" (also known as a "403 balancing test").

In 2001, the Legislature amended s. 90.404, F.S., to add a new subsection (b) to expand the admissibility of collateral crime evidence in cases involving sexual abuse of children 16 years of age or younger.[4] Section 90.404(2)(b), F.S., provides:

> (b)1. In a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.
>
> 2. For the purposes of this paragraph, the term "child molestation" means conduct proscribed by s. 794.011, s. 800.04, or s. 847.0135(5) when committed against a person 16 years of age or younger.[5]

The conduct proscribed under these statutory sections are the following:

1. Sexual Battery under s. 794.011, F.S.,
2. Lewd or Lascivious Battery under s. 800.04(4), F.S.,
3. Lewd or Lascivious Molestation under s. 800.04(5), F.S.,
4. Lewd or Lascivious Conduct under s. 800.04(6), F.S.,
5. Lewd or Lascivious Exhibition under s. 800.04(7). F.S., and
6. Lewd or Lascivious Exhibition via computer transmission under s. 847.0135(5), F.S.

The 2001 addition to s. 90.404(b),F.S., was challenged on due process grounds and upheld by the Florida Supreme Court in *McLean v. State*.[6] This section significantly broadened the admissibility of collateral crime evidence in prosecutions of child molestation cases.[7] The Court noted that the amendments to s. 90.404, F.S., abrogated their prior cases with respect to the admission of such evidence.[8] In upholding the statute, the Court adopted standards to govern admission of such evidence designed to protect the due process rights of the accused. First, the court required that the evidence of the collateral crime be proven by clear and convincing evidence. Second, the court required that the trial court balance the probative value of the evidence against the danger of unfair prejudice, pursuant to s. 90.403, F.S.[9] Third, the court

[4] Ch. 2001-221, Laws of Florida.
[5] s. 847.0135(5), F.S., was added to the offenses in this subsection in Ch. 2008-172.
[6] *McLean v. State*, 934 So.2d 1248 (Fla. 2006).
[7] See, *Mendez v. State*, 961 So.2d 1088, 1090 (Fla. 2007).
[8] *McLean*, at 1259.
[9] In upholding the statute, the Court compared the new provisions to the comparable federal rules of evidence dealing with the same issue and paralleled the federal court analysis in connection with its second requirement that such evidence be subject to the balancing test required under s. 90.403, F.S. *McLean*, at 1259 -1261 comparing s. 90.404(2)(b) F.S., and s. 90.403, F.S., with Federal Rules of Evidence 413 relating to sexual assault, 414 relating to child molestation and 403 relating to balancing probative value against prejudice to the defense.

cautioned that the collateral crime evidence must not become a "feature" of the trial. Finally, the court required that, upon request, the jury be instructed as to the limited purpose for which the evidence may be considered.

Discovery Rules in Criminal Cases

Rule 3.220, Florida Rules of Criminal Procedure, governs the discovery obligations of a prosecutor and defense attorney in criminal cases. The defendant's election to participate in the process of pretrial discovery triggers a reciprocal obligation for the defendant.

The prosecutor's discovery obligation requires disclosure of information and material within the state's possession or control. It also requires that the state allow the defendant to "inspect, copy, test, and photograph" the information and material, including "any tangible papers or objects that were obtained from or belonged to the defendant.[10]

Treatment of Sexual Assault Victims

Section 395.1021, F.S., requires medical facilities that perform emergency room services to arrange for rendering of appropriate medical attention and treatment of sexual assault victims. The statute requires that this be done in part through medical examinations conducted for the purpose of collecting physical evidence when required by law enforcement personnel.

Video Voyeurism Statute of Limitation

Section 810.145, F.S., creates the criminal offenses of video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination. Depending on the circumstances, the offenses under this section are punishable as a first degree misdemeanor, third degree felony or second degree felony.[11]

A statute of limitation is an absolute bar to the filing of a legal case after a date set by law. Section 775.15, F.S., provides statutes of limitation for criminal offenses. Under this section, the time limitations period begins to run the day after an offense is committed.[12] An offense is considered committed either when every element of the crime has occurred or, if there is a legislative purpose to prohibit a continuing course of conduct, at the time the course of conduct is terminated.[13] The statute of limitation for a misdemeanor of the first degree is two years. For second and third degree felonies the statutes of limitation period is generally three years.

One of the essential elements of the video voyeurism offenses is that it occurs without the victim's knowledge. As a result, the statutes of limitation can expire before a victim becomes aware that the crime has occurred.

[10] Rule 3.220(b)(1)(F), Fl.R.Crim.P.

[11] s. 810.145(6), F.S., provides that the offense is generally a first degree misdemeanor. If, however, the person has a prior conviction , the person is guilty of a third degree felony. s. 810.145(7), F.S. Also, under s. 810.145(8), F.S., persons over 18 years of age responsible for a child under 16, or who are employed at a private school, and persons 24 years of age who commit the offense against a child under 16, commit a third degree felony. If persons under subsection (8) have been previously convicted, the offense is a second degree felony.

[12] s. 775.15(3), F.S.

[13] *Id*.

Rape Crisis Program Trust Fund
The Rape Crisis Program Trust Fund is created in s. 794.056, F.S., within the Department of Health to provide funds for rape crisis centers in the state. It is funded in part through collections of additional court assessments which consist of a $151 surcharge added to amounts paid by persons pleading guilty or no contest to, or found guilty of, specified sex offenses listed in s. 938.085, F.S., and s. 794.056, F.S.[14]

HIV Testing of Person Charged with Certain Crimes
Section 960.003(2)(a), F.S., requires a court to order a defendant to undergo HIV testing upon request of the victim in any case where the defendant is formally charged with any of the sexual or violent offenses listed in s. 775.0877(a)-(n), F.S., that involved the transmission of body fluids from one person to another.[15]

Section 960.003(2)(b), F.S., provides for HIV testing upon request of the victim when the crime involved is a sexual offense under ss. 775.0877(a)-(n) or 825.1025, F.S., and the victim is a minor, disabled adult or an elderly person regardless of whether the crime involved the transmission of body fluids from one person to another.

Under both sections, the defendant must undergo testing within 48 hours after the court enters an order compelling the testing.

Relocation Assistance
Section 960.198, F.S., authorizes the Department of Legal Affairs to award a one-time payment of up to $1,500 on a single claim and a maximum lifetime limit of $3,000 to a victim of domestic violence who needs immediate relocation assistance to escape domestic violence. In order to qualify for assistance.

- There must be proof that an offense of domestic violence was committed;
- It must have been reported to law enforcement;
- The need for assistance must be certified by a domestic violence center within the state; and
- The center's certification must assert that the victim is cooperating with law enforcement officials.[16]

Required Instruction
Section 1003.42(2), F.S., requires members of the instructional staff of public schools to teach prescribed courses of study on the following topics related to health and safety:

[14] The sum of $150 from these surcharges are deposited into the trust fund while $1 is paid to the clerk of court as a service charge. s. 938.085, F.S.
[15] The offenses are: s. 794.011, F.S., relating to sexual battery; s. 826.04, F.S., relating to incest; s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; ss. 784.011, 784.07(2)(a), and 784.08(2)(d), F.S., relating to assault; ss. 784.021, 784.07(2)(c), and 784.08(2)(b), F.S., relating to aggravated assault; ss. 784.03, 784.07(2)(b), and 784.08(2)(c), F.S., relating to battery; ss. 784.045, 784.07(2)(d), and 784.08(2)(a), F.S., relating to aggravated battery; s. 827.03(1), F.S., relating to child abuse; s. 827.03(2), F.S., relating to aggravated child abuse; s. 825.102(1), F.S., relating to abuse of an elderly person or disabled adult; s. 825.102(2), F.S., relating to aggravated abuse of an elderly person or disabled adult; s. 827.071, F.S., relating to sexual performance by person less than 18 years of age; ss. 796.03, 796.07, and 796.08, F.S., relating to prostitution; or s. 381.0041(11)(b), F.S., relating to donation of blood, plasma, organs, skin, or other human tissue.
[16] Section 960.198(2), F.S.

(n) Comprehensive health education[17] that addresses concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury prevention and safety; nutrition; personal health; prevention and control of disease; and substance use and abuse.

III. Effect of Proposed Changes:

The bill expands the admission of collateral crime evidence to all cases involving crimes "of a sexual nature," for its bearing on any matter to which it is relevant regardless of the age of the victim. Crimes of a sexual nature, as set forth in the bill are:

- s. 784.048, F.S. - Stalking
- s. 787.01, F.S. - Kidnapping
- s. 787.02, F.S. - False imprisonment
- s. 787.025(2)(c), F.S. - Luring or enticing a child
- s. 794.05, F.S. - Unlawful activity with certain minors
- s. 796.03, F.S. - Procuring person under 18 for prostitution
- s. 796.035, F.S. - Selling or buying of minors into sex trafficking or prostitution
- s. 796.045, F.S. - Sex trafficking
- s. 825.1025(2)(b), F.S. - Lewd or lascivious offenses against an elderly or disabled person
- s. 827.071, F.S. - Sexual performance by a child
- s. 847.0145, F.S. - Selling or buying minors and
- s. 985.701(1), F.S. - Sexual misconduct by a juvenile justice employee

The bill creates an undesignated new section of law to require a court to deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce any material that constitutes child pornography as defined in s. 827.071, F.S. (Sexual Performance by a Child) or s. 847.001, F.S. (Definitions as used in the chapter on Obscenity). Although child pornography is not defined in s. 827.071, F.S., the definition provided in s. 847.001(3), F.S., is "any image depicting a minor engaged in sexual conduct." The prosecutor must make the material reasonably available to the defendant by providing ample opportunity for the inspection, viewing, and examination of the defendant, defense attorney, or defense expert.

The bill amends s. 395.1021(2), F.S., to provide that the "appropriate medical attention and treatment of sexual assault victims" required under this section includes the gathering of forensic medical evidence necessary for investigation and prosecution either when a victim reports a sexual battery to a law enforcement agency or when the victim requests the evidence to be gathered for a possible future report to law enforcement.

[17] The health education curriculum for students in grades 7 through 12 shall include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse.

The bill amends s. 775.15, F.S., to authorize prosecution for any offense of video voyeurism within one year after the date on which the victim obtained actual knowledge of the existence of a recording or the date on which the recording is confiscated by a law enforcement agency, whichever occurs first.

The bill amends ss. 794.056 and 938.085, F.S., to add new offenses to the list of crimes which will support the financing of the trust fund through the additional $151 surcharge. These crimes are:

- s. 775.21, F.S. - The Florida Sexual Predators Act,
- s. 787.025, F.S. - Luring or enticing a child,
- s. 787.06, F.S. - Human trafficking,
- s. 787.07, F.S. - Human smuggling,
- s. 794.05, F.S. - Unlawful sexual activity with certain minors,
- s. 794.08, F.S. - Female genital mutilation,
- s. 796.03, F.S. - Procuring a person under 18 for prostitution,
- s. 796.035, F.S. - Selling or buying minors into sex trafficking,
- s. 796.04, F.S. - Forcing or compelling another to become a prostitute,
- s. 796.045, F.S. - Sex trafficking,
- s. 796.05, F.S. - Deriving support from proceeds of prostitution,
- s. 796.06, F.S. - Renting space to be used for lewdness, assignation or prostitution,
- s. 796.07(2)(a)-(d) and (i), F.S. - Prostitution,
- s. 800.03, F.S. - Exposure of sexual organs,
- s. 810.14, F.S. - Voyeurism,
- s. 810.145, F.S. - Video voyeurism,
- s. 812.135, F.S. - Home invasion robbery,
- s. 817.025, F.S. - Home or private business invasion by false impersonation,
- s. 825.102, F.S. - Abuse or aggravated abuse of an elderly or disabled person,
- s. 825.1025, F.S. - Lewd and lascivious offenses committed on an elderly or disabled person,
- s. 827.071, F.S. - Sexual performance by a child,
- s. 836.10, F.S. - Written threats to kill or do bodily injury,
- s. 847.0135(2), F.S. - Computer pornography child exploitation,
- s. 847.0137, F.S. - Transmission of pornography by electronic device,
- s. 847.0145, F.S. - Selling or buying minors, and
- s. 943.0435, F.S. - Sexual offender registration.

The bill amends s. 960.003, F.S., to require a court to order a defendant to undergo HIV testing *within* 48 hours after the filing of the indictment or information charging him or her with a crime listed in s. 775.0877(1)(a)-(n), F.S. Because the court does not order the testing until requested by the victim, however, it is unclear how the bill's provisions will apply when the request of the victim is made more than 48 hours *after* the filing of formal charges.

The bill extends relocation assistance to victims of sexual violence. Under the bill, the need for assistance must be certified by a rape crisis center. Unlike domestic violence cases, where it is common for the victim to reside with the abuser, and relocation concerns are typical after domestic violence has been reported, offenses involving sexual violence occur in more diverse

and varied surroundings and circumstances. Therefore, the extent to which acts of sexual violence occur under circumstances where the victim would seek relocation is unknown.

The bill adds Internet safety to the list of topics which must be covered in school curriculum under s. 1003.42(2)(n), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Collateral crime evidence
Among the crimes added to s. 90.404(2)(b), F.S., are the crimes of stalking, kidnapping and false imprisonment. Although these crimes may in some instances be committed in conjunction with or to facilitate the commission of sexual crimes, the elements of these crimes standing alone have no sexual component.

Under *McLean*, balancing the probative value of the evidence against the danger of substantial unfair prejudice under s. 90.403, F.S., was a critical component of the Court's analysis in upholding the expansion of collateral crime evidence in cases of child sexual abuse against a due process challenge to Ch. 2002-221, Laws of Florida.

The Court noted that ". . . the less similar the prior acts, the less relevant they are to the charged crime, and therefore the less likely they will be admissible. . . . the less similar the prior acts, the more likely that the probative value of this evidence will be substantially outweighed by the danger of unfair prejudice, . . . ".

Under the provisions of this bill, a person charged with a kidnapping or false imprisonment that doesn't include any fact "of a sexual nature" may find the state seeking to admit into evidence collateral crime evidence of a stalking, for example, also with no facts of a sexual nature surrounding the collateral act. Because the bill expands the range of collateral crimes to include offenses that do not include sexual elements, it may subject the statute to a renewed constitutional challenge based on collateral crimes that are less similar to each other than crimes that have a common feature of including a sexual element to the crime.

Criminal Proceedings in Cases Involving Child Pornography
The Florida Supreme Court has held that the authority granted to it under Section 2, of Article V of the Florida Constitution to adopt rules of practice and procedure is exclusively its own. Since that time, the Legislature has passed acts which the court has declared impermissibly procedural.

In 2008, in the case of *Massey v. David*, the Supreme Court reviewed a statute that conditioned the award of expert witness fees as taxable costs upon a requirement that the expert witness furnish the opposing party with a written report within a certain number of days. In *Massey*, the Supreme Court articulated how statutes containing a mixture of substance and procedure are analyzed in order to determine their constitutional validity in view of the Supreme Court's procedural rulemaking authority. The court explained:

> Of course, statutes at times may not appear to fall exclusively into either a procedural or substantive classification. We have held that where a statute contains some procedural aspects, but those provisions are so intimately intertwined with the substantive rights created by the statute, that statute will not impermissibly intrude on the practice and procedure of the courts in a constitutional sense, causing a constitutional challenge to fail. (citations omitted). If a statute is clearly substantive and "operates in an area of legitimate legislative concern," this Court will not hold that it constitutes an unconstitutional encroachment on the judicial branch. (citations omitted). However, where a statute does not basically convey substantive rights, the procedural aspects of the statute cannot be deemed "incidental," and that statute is unconstitutional. (emphasis added).

When a statute "impermissibly" intrudes on the practice and procedure of the courts or when legislation is within a "legitimate area of legislative concern" is unclear. In *Massey*, the Court found that the statute's requirement of a report submitted to the opposing party conflicted with the lack of such a provision in the court rule and the statute was invalidated.

Florida Rule of Criminal Procedure 3.220(b) relating to discovery in criminal cases mandates that the state must "disclose to the defendant and permit the defendant to inspect, copy, test, and photograph . . . any tangible papers or objects that were obtained from or belong to the defendant. . . ." .

The bill's provision prohibiting the court from granting a defendant's request to copy this particular type of evidence conflicts with the mandate of Rule 3.220 and could subject it to a court challenge on the basis that this provision invades the Supreme Court's exclusive authority to adopt rules of practice and procedure.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Defendants whose crimes are among the newly enumerated crimes requiring that additional costs be assessed against the defendant will be responsible for an additional $151 surcharge.

C. Government Sector Impact:

The addition of crimes to be included where the defendant pays costs that are a contribution of funds supporting the Rape Crisis Program Trust Fund will increase funding for the trust fund. The extent of its positive fiscal impact on the trust fund is indeterminate at this time.

The expansion of financial relocation assistance to victims of sexual violence will likely have a negative fiscal impact on state government, but the amount of the impact will depend on the number of sexual violence victims who will seek and be granted relocation assistance. The frequency of that occurrence is unknown although it is expected to be a small number of instances in comparison to the number of overall sexual offenses reported.

VI. Technical Deficiencies:

Beginning on line 119 of the bill, in the expansion of the statutes of limitation for crimes of video voyeurism, the phrase "[n]otwithstanding the time periods prescribed in this section . . ." may be construed to render the current two and three year statute of limitations inapplicable. Depending on when the victim learns of the existence of the video recording or the date it is confiscated by law enforcement, the bill may actually shorten the statute of limitations in some instances. If the term "notwithstanding" were changed to "in addition to" the bill would increase the statute of limitations for these offenses in every case.

Also, line 226 of the bill appears to add the phrase "or to a victim of sexual violence" in the wrong place in the subsection amended. It is suggested that this term belongs after the reference to "domestic violence" on line 224, which would then read "maximum of $3,000 to a victim of domestic violence or sexual violence". Clarification is also suggested on line 225 of the bill by inserting "or sexual violence" at the end of the line.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 494
INTRODUCER:	Senator Fasano
SUBJECT:	Sexual Offenders and Predators
DATE:	March 23, 2011
REVISED:	

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

I. Summary:

The bill adds the following to the list of factors a court must consider when determining whether to release a defendant on bail or other conditions:

- Whether the defendant is required to register as a sexual offender under s. 943.0435, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.
- Whether the defendant is required to register as a sexual predator under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

This bill takes effect July 1, 2011.

This bill substantially amends section 903.046 of the Florida Statutes.

II. Present Situation:

Pretrial Release

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.[1] Generally, pretrial release is

[1] Report No. 10-08, *"Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed,"* Office of Program Policy Analysis & Government Accountability, January 2010.

granted by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.[2]

Article I, section 14, of the Florida Constitution provides that unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions. The accused may be detained if no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process.[3]

Bail, one of the most common forms of pretrial release, requires an accused to pay a set sum of money to the sheriff. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited.

Section 903.046, F.S., currently states that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant. The statute further specifies that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, courts must consider the following:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.[4]
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.[5]

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[2] *Id*.

[3] Art. I, s. 14, Fla. Const.

[4] Section 903.046(2)(d), F.S., specifies that any defendant who failed to appear on the day of any required court proceeding in the case at issue, but who later voluntarily appeared or surrendered, is not eligible for a recognizance bond; and any defendant who failed to appear on the day of any required court proceeding in the case at issue and who was later arrested is not eligible for a recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than $2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Section 903.046(2)(d), F.S., also specifies that notwithstanding anything in s. 903.046, F.S., the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear; and that s. 903.046, F.S., may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds.

[5] Section 903.046(2)(d), F.S., specifies that it is the finding and intent of the Legislature that crimes involving drugs and other controlled substances are of serious social concern, that the flight of defendants to avoid prosecution is of similar serious social concern, and that frequently such defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of pretrial bail. Therefore, the courts should carefully consider the utility and necessity of substantial bail in relation to the street value of the drugs or controlled substances involved.

- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.
- Whether the crime charged is a violation of ch. 874, F.S.,[6] or alleged to be subject to enhanced punishment under ch. 874, F.S. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she shall not be eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.[7]

Pretrial Release – Offenders on Community Supervision

Section 948.06, F.S., sets forth the procedures used when an offender on probation[8] or community control[9] violates the terms and conditions of their supervision. Offenders arrested for violating the terms and conditions of community supervision are arrested and brought before the sentencing court.[10] Generally, if the offender denies having violated the terms of supervision, the court has the option to commit the offender to jail, release the offender with or without bail to await further hearing, or dismiss the charge.[11]

In certain instances, courts are limited or prohibited from granting pretrial release to offenders arrested for violating their terms of supervision. Section 948.06(4), F.S., requires the court to make a finding that the following offenders are not a danger to the public before releasing the offender on bail:

- Offenders who are under supervision for any offense prescribed in ch. 794, F.S., ss. 800.04(4), (5), and (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S.[12]
- Offenders are registered sexual offenders or sexual predators.[13]
- Offenders who are under supervision for a criminal offense for which the offender would meet the sexual predator or sexual offender registration requirements in ss. 775.21, 943.0435, or 944.607, F.S., but for the effective date of those sections.

[6] Chapter 874, F.S., relates to criminal gang enforcement and prevention.
[7] s. 903.046, F.S.
[8] Section 948.001, F.S., defines the term "probation" as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S.
[9] Section 948.001, F.S., defines the term "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced.
[10] s. 948.06, F.S.
[11] *Id*.
[12] Chapter 794, F.S., relates to sexual battery. Section 800.04, F.S., relates to lewd and lascivious offenses upon or in the presence of a person less than 16 years of age. Section 827.071, F.S., relates to sexual performance by a child. Section 847.0145, F.S., relates to selling or buying of minors.
[13] Sections 775.21, 943.0435, and 944.607, F.S., set forth the criteria one must meet to be considered a sexual offender or sexual offenders. The statutes also provide registration requirements for sexual offenders and sexual predators.

The statute also prohibits a court from granting pretrial release to an offender arrested for violating their terms of supervision (other than violations related to a failure to pay costs) and who is:

- A violent felony offender of special concern;[14]
- On supervision for any offense committed on or after March 12, 2007, and who is arrested for any qualifying offense; or[15]
- On supervision, has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), F.S., a three-time violent felony offender as defined in s. 775.084(1)(c), F.S., or a sexual predator under s. 775.21, F.S., and who is arrested for committing a qualifying offense on or after March 12, 2007.

Such persons must remain in custody pending the resolution of the violation.[16]

III. Effect of Proposed Changes:

The bill amends s. 903.046, F.S., to add the following to the list of factors a court must consider when determining whether to release a defendant on bail or other conditions:

- Whether the defendant is required to register as a sexual offender under s. 943.0435, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance[17] on the case in order to ensure the full participation of the prosecutor and the protection of the public.
- Whether the defendant is required to register as a sexual predator[18] under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[14] The term "violent felony offender of special concern" is defined in s. 948.06(8)(b), F.S.
[15] The term "qualifying offense" is defined in s. 948.06(8)(c), F.S., and includes offenses that qualify someone as a sexual offender.
[16] s. 948.06(8)(d), F.S.
[17] *See* Rule 3.130, Fla. R. Crim. Proc.
[18] In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.

C. Trust Funds Restrictions:

None

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

In January, 2011, there were 32,692 registered sexual offenders and 7,743 registered sexual predators in Florida. It is unknown how many of these persons are arrested each year. The bill prohibits such persons from being released on bail or surety bond until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails should be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 714
INTRODUCER:	Senator Margolis
SUBJECT:	Disabled Parking Permits
DATE:	March 21, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Spalla	TR	**Favorable**
2.	Clodfelter	Cannon	CJ	**Pre-Meeting**
3.			BC	
4.				
5.				
6.				

I. Summary:

Senate Bill 714 revises laws relating to disability parking permits. The bill:

- expands the type of officials who may waive citations for disability permit parking violations by including the parking enforcement specialist or agency that issued the citation;
- revises the requirements for renewing or replacing a long-term disabled parking permit and includes prohibitions for certain violations;
- provides for random audits of disabled parking permit holders;
- requires the Department of Highway Safety and Motor Vehicles (DHSMV, department) to develop and implement a system to allow the reporting of abuses of disabled parking permits; and
- requires the department to develop and implement a public awareness campaign regarding how such abuse burdens disabled persons.

This bill substantially amends ss. 318.18 and 320.0848 of the Florida Statutes. This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Section 320.0848, F.S., authorizes the department and its agents to issue disabled parking permits to persons with impaired mobility. Such permits may be issued for a period of up to 4 years to any person with a long-term mobility impairment. Similarly, persons with a temporary mobility impairment may be issued a temporary disabled parking permit for a period of up to 6 months. A fee may be charged for the permit. However, no person may be charged a fee more frequently than once every 12 months.

A person applying for a disabled parking permit must be currently certified as being legally blind or as having any of the following conditions which would render the person unable to walk 200 feet without stopping to rest:

- The inability to walk without a brace, cane, crutch, prosthetic device, or other assistive device;
- The need to permanently use a wheelchair;
- Lung disease as measured within specified limits;
- Use of portable oxygen;
- A Class III or IV heart condition; or
- A severe limitation in the ability to walk due to an arthritic, neurological, or orthopedic condition.

The certification must be made by a physician, podiatrist, optometrist, advanced registered nurse practitioner, or physician's assistant, any of which must be licensed under one of various chapters of Florida Statute. However, provisions are made to encompass certification by similarly-licensed physicians from other states, as well. The certification must include:

- The disability of the applicant;
- The certifying practitioner's name, address, and certification number;
- The eligibility criteria for the permit;
- Information concerning the penalty for falsification;
- The duration of the condition; and
- Justification for any additional placard issued.

The disabled parking permit must be a placard that can be placed in a motor vehicle so as to be visible from the front and rear of the vehicle. Each side of the placard must have the international symbol of accessibility in a contrasting color in the center so as to be visible. One side of the placard must display the applicant's driver's license number or state identification card number along with a warning the applicant must have such identification at all times while using the parking permit. No person will be required to pay a fee for a parking permit for disabled persons more than once in a 12-month period.

Although a disabled parking permit must be renewed every four years, it does not expire under current law. The department allows for online and mail-in renewals, as well as replacements in the case of stolen or damaged permits, for persons certified as having a long-term disability. Currently, s. 320.0848, F.S., does not require persons who have a long-term disabled parking permit to apply for a renewal or a replacement permit in person or provide an additional certificate of disability.

Section 320.0848, F.S., allows for temporary disabled parking permits to be issued for the period of the disability as stated by the certifying physician, but not to exceed six months. A temporary parking permit for a disabled person must be a different color than the long-term permit (the long-term placard is blue, the temporary placard is red), and, similar to the long-term permit,

must display the permit expiration date, the state identification or driver's license number of the permit holder.

An application for a disabled parking permit is an official state document. The following statement is required to appear on each application immediately below the applicant's name and the certifying practitioner's name:

> Knowingly providing false information on this application is a misdemeanor of the first degree, punishable as provided in s. 775.082, Florida Statutes, or s. 775.083, Florida Statutes. The penalty is up to 1 year in jail or a fine of $1000, or both.

A person who fraudulently obtains or unlawfully displays a disabled parking permit (or uses an unauthorized replica) is guilty of a 2nd degree misdemeanor. The penalty is up to 60 days in jail or a fine of $500, or both.

A law enforcement officer may confiscate the disabled parking permit from any person who fraudulently obtains or unlawfully uses such a permit, including using the permit while the owner of the permit is not being transported. A law enforcement officer may confiscate any disabled parking permit that is expired, reported as lost or stolen, or defaced, or that does not display a personal identification number. However, the permit owner may apply for a new permit immediately.

The department tracks all disabled parking permits issued since 1999, including confiscations of the permit. According to DHSMV, the department conducts some auditing to ensure that driver licenses are only issued to living persons. However, programming is not specifically tailored to audit the records of persons to whom disabled parking permits have been issued.

III. Effect of Proposed Changes:

Section 1 amends s. 318.18(6), F.S., expanding the list of officials who can waive citations for illegally parking in a disability parking space. The bill allows the parking enforcement specialist or the agency that issued a parking citation to waive citations and sign affidavits of compliance.

Section 2 amends s. 320.0848, F.S., to require holders of disabled parking permits to renew in person and provide a current certificate of disability. Persons obtaining a replacement for a disabled parking permit must appear in person to submit the required application.

Current law allows law enforcement officers to confiscate the disabled parking permit of a person who has obtained it fraudulently or uses it unlawfully. The bill also authorizes parking enforcement specialists to confiscate fraudulently obtained or unlawfully used permits.

The bill requires a person who is found guilty of unlawful use of a permit (or who enters a plea of nolo contendere to the charge) to wait four years before applying for a new disabled permit if he or she had a prior finding of guilt or plea of nolo contendere to the charge.

The bill requires DHSMV to conduct random audits of disabled parking permit holders at least every six months. As a component of this audit, the department is required to:

- review the death records maintained by the Department of Health to ensure the permit holder is not deceased;
- review the number of times the permit has been confiscated or unlawfully used;
- determine if the permit has ever been reported lost or stolen; and
- determine the current status of the permit.

The department is directed to verify, at least annually, that the owner of each disabled parking permit has not died. If a permit owner is found to be deceased, the department is directed to promptly invalidate the decedent's permit. The department is also required to develop and implement a method by which abuse can be reported by telephone hotline, submission of an online form, or by mail.

Section 3 creates an unidentified section of Chapter 320, F.S., to require DHSMV to make a public announcement and conduct a public awareness campaign regarding the abuses of disabled parking permits and the burdens inflicted on disabled persons throughout the state. The campaign is to begin within 30 days after the effective date of this act and continue for not less than six months. Its purpose is to inform the public about:

- the requirement to appear in person to renew an expired disabled parking permit or replace a lost or stolen disabled parking permit;
- the implementation of the periodic disabled parking permit audit system; and
- the new complaint process for reporting abuses of disabled parking permits.

Section 4 establishes an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Permit holders will bear costs related to appearing in person at a Tax Collector's office and obtaining a current certification form from their physician every four years.

C. Government Sector Impact:

DHSMV estimates approximately 60 hours of programming would be needed to implement the provisions of the bill. Any costs to implement this bill will be absorbed within existing DHSMV resources.

Local Tax Collectors offices would see an increased workload due to the requirement that permit holders appear in person when renewing their permits.

VI. Technical Deficiencies:

DHSMV notes that additional time will be required to develop the public awareness campaign since 30 days is not sufficient time for development activities. The department recommends pushing back the roll out of the campaign for 120 days and continuing the campaign for 12 months rather than six.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

137026

LEGISLATIVE ACTION

Senate . House

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. .

. .

. .

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

Senate Amendment (with title amendment)

Delete lines 32 - 35
and insert:

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

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

And the title is amended as follows:

Delete line 9

and insert:

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 746
INTRODUCER:	Senator Altman
SUBJECT:	Open House Parties
DATE:	March 14, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Young	Imhof	RI	**Favorable**
2.	Dugger	Cannon	CJ	**Pre-Meeting**
3.			BC	
4.				
5.				
6.				

I. Summary:

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

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

The bill provides a July 1, 2011 effective date.

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

II. Present Situation:

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

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

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

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

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

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

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

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

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

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

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

[1] *See* s. 775.082(4)(b), F.S.
[2] *See* s. 775.083(1)(e), F.S.
[3] Section 562.111, F.S.
[4] Black's Law Dictionary (9th ed. 2009), knowledge (actual knowledge).
[5] *See State v. Manfredonia*, 649 So.2d 1388, 1391 (Fla. 1995).

III. Effect of Proposed Changes:

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

The bill also creates subsection (5) in s. 856.015, F.S., to provide that a person who violates the statute by knowingly hosting an open house party and that violation causes or contributes to causing serious bodily injury (as defined in s. 316. 1933, F.S.) or death, is guilty of a misdemeanor of the first degree.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

[6] *See* s. 775.082(4)(a) and s. 775.083(1)(d), F.S.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. .

. .

. .

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (i) is added to subsection (1) of section 893.13, Florida Statutes, to read:

893.13 Prohibited acts; penalties.—

(1)

(i) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a

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homeless shelter. As used in this paragraph, the term "homeless shelter" means a supervised publicly or privately operated shelter designed to provide temporary living accommodations for persons who otherwise lack a fixed, regular, and adequate nighttime residence. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraphs (c) and (e) of subsection (3) of section 921.0022, Florida Statutes, are amended to read

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066	3rd	Unlawfully obtaining or using

(4)(b)-(d)		confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.

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376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.

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624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
796.05(1)	3rd	Live on earnings of a prostitute.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less

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			than $10,000.
62			
	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
63			
	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
64			
	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
65			
	817.233	3rd	Burning to defraud insurer.
66			
	817.234 (8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
67			
	817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
68			
	817.236	3rd	Filing a false motor vehicle insurance application.
69			
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
70			
	817.413(2)	3rd	Sale of used goods as new.

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817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or

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		(4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
<u>893.13(1)(i)2.</u>	<u>2nd</u>	<u>Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of homeless shelter.</u>
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.

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893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner’s practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner’s practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a

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		controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.

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316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.

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626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or

		older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of

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		benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more individuals.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess any photographic material, motion picture, etc., which includes sexual conduct by a child.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.

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847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

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893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
<u>893.13(1)(i)1.</u>	<u>1st</u>	<u>Sell, manufacture, or deliver s.</u>

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		893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs within 1,000 feet of homeless shelter.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to controlled substances; amending s. 893.13, F.S.; prohibiting specified offenses within 1,000 feet of the real property comprising a homeless shelter; defining the term "homeless shelter"; providing criminal penalties; amending s. 921.0022, F.S.; ranking offenses on the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 794
INTRODUCER:	Senator Diaz de la Portilla
SUBJECT:	Drug Abuse Prevention and Control
DATE:	March 23, 2011 REVISED:

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

I. Summary:

The bill enhances the felony degree and penalties of certain drug offenses when those offenses are committed within 1,000 feet of a shelter for the homeless.

This bill substantially amends section 893.13 of the Florida Statutes.

II. Present Situation:

Felony Degree and Penalty Enhancements for Drug Offenses Committed Within 1,000 Feet of a Place of Worship or Convenience Business

Section 893.13(1)(e), F.S., provides that, except as authorized by ch. 893.13, F.S., it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet[1] of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171.

Any person who violates this paragraph with respect to:

[1] "We construe the legislative intent to measure within a 1,000-foot radius, not by local idiosyncrasies of pedestrian or automobile travel." *Howard v. State*, 591 So.2d 1067, 1068 (Fla. 4th DCA 1991). Stated another way, distance is established "as the crow flies, *not* as the car drives." *Id.*

- A controlled substance in Schedule (1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. of the controlled substance schedules in ch. 893.03, F.S., commits a first degree felony.[2]
- A controlled substance in Schedule (1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) of the controlled substance schedules in ch. 893.03, F.S., commits a second degree felony.[3]
- Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

This paragraph and other similar paragraphs of subsection (1) of s. 893.13, F.S.,[4] enhance the felony degree and penalty for certain drugs offenses when those offenses are committed within 1,000 feet of specified locations. If the drug offenses were not committed within 1,000 feet of a location for which such offenses would be subject to felony degree and penalty enhancements, the offenses would be of a lesser felony degree and subject to a lesser penalty. For example, if a person sold a non-trafficking amount of cocaine (a Schedule (2)(a) controlled substance[5]) and this sale was not committed within 1,000 feet of a location subject to felony degree and penalty enhancements, this sale would be a second degree felony.[6] However, if the person sold a non-trafficking amount of cocaine within 1,000 feet of a convenience business, this sale would be a first degree felony, as provided in s. 893.13(1)(e), F.S.

Drug Offenses Committed Near Homeless Shelters
Section 414.0252(7), F.S., defines the term "homeless" to mean an individual who lacks a fixed, regular, and adequate nighttime residence or an individual who has a primary nighttime residence that is any of the following:

- A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill.
- An institution that provides a temporary residence for individuals intended to be institutionalized.
- A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Current law does not define the term "shelter for the homeless" or "homeless shelter."

Current law does not enhance the felony degree and penalty for drug offenses committed within 1,000 feet of a homeless shelter.

[2] A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000 may also be imposed. ss. 775.082 and 775.083, F.S.
[3] A second degree felony is generally punishable by up to 15 years in state prison and a fine of up to $10,000 may also be imposed. ss. 775.082 and 775.083, F.S.
[4] *See* s. 893.13(1)(c), F.S. (1,000 feet of a child care facility, school, park, community center, or publicly owned recreational center), s. 893.13(1)(d), F.S. (1,000 feet of a college or university), s. 893.13(1)(f), F.S. (1,000 feet of a public housing facility), and s. 893.13(1)(c), F.S. (1,000 feet of an assisted living facility).
[5] s. 893.03(2)(a)4., F.S.
[6] s. 893.13(1)(a), F.S.

III. Effect of Proposed Changes:

The bill amends s. 893.13(1)(e), F.S., to enhance the felony degree and penalties for sale, manufacture, or delivery, or possession with intent to sell, manufacture, or deliver a controlled substance when any of those offenses are committed within 1,000 feet of a "shelter for the homeless as defined in s. 414.0252." (See "Present Situation" section of this bill analysis for a description of the felony degree and penalty enhancements.)

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

On line 20 of the bill, the bill references "shelter for the homeless as defined in s. 414.0252." Section 414.0252, F.S., defines the term "homeless" but does not specifically define the term "shelter for the homeless" or "homeless shelter." A House bill that substantively addresses the same subject (HB 897) defines what a homeless shelter is.

The bill does not amend the offense severity ranking chart in s. 921.0022, F.S., to reference the changes to s. 893.13(1)(e), F.S., in the ranking descriptions relevant to s. 893.13(1)(e), F.S. HB 879 amends ranking descriptions.[7]

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

[7] The House bill also appears to be different than the Senate bill by creating a new paragraph within subsection (1) of s. 893.13, F.S., rather than amending paragraph (e) of that subsection.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete line 70

and insert:

Section 4. This act shall take effect October 1, 2011.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 1146
INTRODUCER:	Senator Sachs
SUBJECT:	Drug-related Overdoses
DATE:	March 23, 2011
REVISED:	

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

I. Summary:

Florida law contains a number of provisions that provide immunity from civil liability to persons in specified instances. Florida law also contains various provisions that allow criminal defendants to have their sentences reduced or suspended in certain instances.

The bill creates s. 893.21, F.S., entitled the "911 Good Samaritan Act" and provides that:

- A person making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person's seeking medical assistance.
- A person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the overdose and the need for medical assistance.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions.

The bill also adds the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence:

- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

The bill is effective on July 1, 2011.

This bill substantially amends section 921.0026, Florida Statutes. The bill creates section 893.21, Florida Statutes.

II. Present Situation:

Florida law currently contains a number of provisions that provide immunity from civil liability to persons in specified instances. Florida law also contains various provisions that allow criminal defendants to have their sentences reduced or suspended in certain instances. A description of these provisions follows.

Florida Good Samaritan Laws
The Good Samaritan Act, found in s. 768.13, F.S., provides immunity from civil liability for those who render emergency care and treatment to individuals in need of assistance. The statute provides immunity for liability for civil damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations or at the scene of an emergency, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.[1]
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within the scope of his or her training.[2]
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.[3]

Section 768.1325, F.S., provides that a person is immune from civil liability for any harm resulting from the use or attempted use of an automated external defibrillator device on a victim of a perceived medical emergency, without objection of the victim.

Section 768.1355, F.S., entitled the Florida Volunteer Protection Act, provides that any person who volunteers to perform any service for any nonprofit organization without compensation will incur no civil liability for any act or omission that results in personal injury or property damage if:

- The person was acting in good faith within the scope of any official duties performed under the volunteer service and the person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct on the part of the person in the performance of the duties.

[1] Section 768.13(2)(a), F.S.
[2] Section 768.13(2)(d), F.S.
[3] Section 768.13(3), F.S.

Reduction or Suspension of Criminal Sentence
Section 921.186, F.S., allows the state attorney to move the sentencing court to reduce or suspend the sentence of persons convicted of a felony who provide substantial assistance in the identification, arrest, or conviction of any accomplice, accessory, coconspirator, or principal of the defendant; or any other person engaged in felonious criminal activity.

Mitigating Circumstances
The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart"[4] from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.[5]

The points are added in order to determine the "lowest permissible sentence" for the offense. A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure."[6] Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include:

- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- The defendant acted under extreme duress or under the domination of another person.
- The defendant cooperated with the state to resolve the current offense or any other offense.[7]

Currently, there are no mitigating circumstances related to defendants who make a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

Possession of a Controlled Substance
Section 893.02, F.S., states possession of a controlled substance[8] "includes temporary possession for the purpose of verification or testing, irrespective of dominion or control."

Actual or constructive possession of certain controlled substances, unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, is a third degree felony punishable[9] by up to 5 years in prison and a fine up to $5,000.[10]

[4] Section 921.0022, F.S.
[5] Section 921.0024, F.S., provides that a defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; and the defendant's prior record and other aggravating factors.
[6] Section 921.0026, F.S.
[7] *Id*.
[8] Section 893.02(4), F.S., defines controlled substance as "any substance named or described in Schedules I-V of s. 893.03, F.S."
[9] As provided in ss. 775.082, 775.083, or 775.084, F.S.
[10] Section 893.13(6)(a), F.S.

Possession of less than 20 grams of cannabis[11] is a first degree misdemeanor punishable[12] by up to 1 year in prison and a fine up to $1,000.[13]

Possession of more than 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), F.S., or any combination thereof, or any mixture containing any such substance is a first degree felony punishable[14] by up to 30 years in prison and a fine up to $10,000.[15]

Paragraphs (1)(a)-(l) of s. 893.135, F.S., prohibit the actual or constructive possession of various quantities of controlled substances that appear in s. 893.03, F.S., and are commonly referred to as "scheduled" drugs. The scheduled drugs are listed in Schedules I-V according to the potential for abuse or addiction, currently accepted medical use in treatment in the United States, and relative degree of danger to the user. Possession violations of s. 893.135(1)(a)-(l), F.S., are drug trafficking offenses that carry minimum mandatory prison sentences that increase in severity as the amount or weight of the drug possessed increases, including capital crimes if deaths result from the manufacture or importation of the drug.[16]

911 Good Samaritan Laws in Other States

In New Mexico, the 911 Good Samaritan Act prevents the prosecution for drug possession based on evidence "gained as a result of the seeking of medical assistance" to treat a drug overdose.[17] This law, which took effect in June 2007, was the first of its kind in the country.[18]

While many states have considered similar Good Samaritan immunity legislation, Washington is the only other state to have passed such a law.[19]

III. Effect of Proposed Changes:

The bill provides that a person who in good faith seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person's seeking medical assistance.

The bill also provides that a person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the overdose and the need for medical assistance.

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[11] For the purposes of s. 893.13(6)(b), F.S., cannabis is defined as all parts of any plant of the genus Cannabis, whether growing or not, and the seeds thereof.
[12] As provided in ss. 775.082 or 775.083 F.S.
[13] Section 893.13(6)(b), F.S.
[14] As provided in ss. 775.082, 775.083, or 775.084, F.S.
[15] Section 893.13(6)(c), F.S.
[16] Sections 893.03 and 893.135(1), F.S.
[17] "Preventing Overdose, Saving Lives." Drug Policy Alliance. March 2009. http://www.drugpolicy.org/library/overdose2009.cfm (Last accessed March 12, 2011.)
[18] *Id.*
[19] SB 5516 entitled "Drug Overdose Prevention." Effective June 2010.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions.

The bill also adds the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence:

- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

The beginning of the bill contains "whereas clauses." It has an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On March 2, 2011, the Criminal Justice Impact Conference (CJIC) met and determined that this bill would have no impact on the Department of Corrections.

VI. Technical Deficiencies:

Although not technically a technical deficiency, it is suggested that the effective date of the bill be changed to October 1, 2011. It is generally preferable that bills relating to criminal laws have an October 1 effective date which provides more time for judges, officials, and practitioners in the field to prepare for the effect of the new law. For example, upon enactment, the Criminal Code scoresheets must be revised and redistributed, oftentimes jury instructions must be written, proposed and adopted by the Supreme Court, and the law enforcement community must become familiar with the change in the law.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.


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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete lines 42 - 76
and insert:
Notwithstanding s. 120.60, for felonies in which the defendant entered a plea of guilty or nolo contendere in an agreement with the court to enter a pretrial intervention or drug diversion program, the board, or the department if there is no board, may not approve or deny the application for a license, certificate, or registration until the final resolution of the case;

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under

115966

21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application;

(c) ~~(b)~~ Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;

(d) ~~(c)~~ Has been terminated for cause, pursuant to the appeals procedures established by the state ~~or Federal Government~~, from any other state Medicaid program ~~or the federal Medicare program~~, unless the applicant has been in good standing with a state Medicaid program ~~or the federal Medicare program~~ for the most recent 5 years and the termination occurred at least 20 years before ~~prior to~~ the date of the application; or~~.~~

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

This subsection does not apply to applicants for initial licensure or certification who were enrolled in an educational or training program on or before July 1, 2010, which was recognized by a board or, if there is no board, recognized by the department, and who applied for licensure after July 1, 2010.

(3) The department shall refuse to renew a

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete lines 118 - 120
and insert:
Section 2. Subsection (6) of section 456.036, Florida Statutes, is amended to read:
456.036 Licenses; active and inactive status; delinquency.—
(6)(a) Except as provided in paragraph (b), a delinquent licensee must affirmatively apply with a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure by a

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delinquent licensee to become active or inactive before the expiration of the current licensure cycle renders the license null without any further action by the board or the department. Any subsequent licensure shall be as a result of applying for and meeting all requirements imposed on an applicant for new licensure.

(b) A delinquent licensee whose license becomes delinquent before the final resolution of a case under s. 456.0635(3) must affirmatively apply by submitting a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which the case achieves final resolution by order of the court. Failure by a delinquent licensee to become active or inactive before the expiration of that licensure cycle renders the license null without any further action by the board or the department. Any subsequent licensure shall be as a result of applying for and meeting all requirements imposed on an applicant for new licensure.

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

And the title is amended as follows:

Delete lines 8 - 9

and insert:

practitioner; providing an exception; amending s. 456.036, F.S.; requiring a delinquent licensee whose license becomes delinquent before the final resolution of a case regarding Medicaid fraud to affirmatively apply by submitting a complete application for active or inactive status during the licensure cycle in which

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the case achieves final resolution by order of the court; providing that failure by a delinquent licensee to become active or inactive before the expiration of that licensure cycle renders the license null; requiring that any subsequent licensure be as a result of applying for and meeting all requirements imposed on an applicant for new licensure; providing an effective

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 1226
INTRODUCER:	Senators Joyner and Gaetz
SUBJECT:	Health Care Fraud
DATE:	March 11, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Stovall	HR	**Favorable**
2.	Erickson	Cannon	CJ	**Pre-Meeting**
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill amends current law relating to the licensure responsibility and authority of the Department of Health (DOH) over health professions and occupations. The bill also amends current law relating to the grounds for a board, or the DOH if there is no applicable board, to refuse to admit certain candidates seeking licensure to any examination and refuse to issue or renew a license, certificate, or registration to certain applicants.

This bill substantially amends the following section of the Florida Statutes: 456.0635.

II. Present Situation:

The Legislature created s. 456.0635, F.S., in 2009 with the enactment of CS/CS/CS/SB 1986, a comprehensive bill designed to address systemic health care fraud in Florida. That bill:

- Increased the Medicaid program's authority to address fraud, particularly as it relates to home health services.
- Increased health care facility and health care practitioner licensing standards to keep fraudulent actors from obtaining a health care license in Florida.
- Created disincentives to commit Medicaid fraud by increasing the administrative penalties for committing Medicaid fraud, posting sanctioned and terminated Medicaid providers on the Agency for Health Care Administration (AHCA) website, and creating additional criminal felonies for committing health care fraud; among other anti-fraud provisions.[1]

[1] *See* ch. 2009-223, L.O.F.

Health Care Practitioner Licensure Authority of the Department of Health

The DOH is responsible for the licensure of most health care practitioners in the state. Chapter 456, F.S., provides general provisions for the regulation of health care professions in addition to the regulatory authority in specific practice acts for each profession or occupation. Section 456.001, F.S., defines "health care practitioner" as any person licensed under:

- Chapter 457 (acupuncture).
- Chapter 458 (medical practice).
- Chapter 459 (osteopathic medicine).
- Chapter 460 (chiropractic medicine).
- Chapter 461 (podiatric medicine).
- Chapter 462 (naturopathy).
- Chapter 463 (optometry).
- Chapter 464 (nursing).
- Chapter 465 (pharmacy).
- Chapter 466 (dentistry).
- Chapter 467 (midwifery).
- Part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468 (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics).
- Chapter 478 (electrolysis).
- Chapter 480 (massage practice).
- Part III or part IV of chapter 483 (clinical laboratory personnel and medical physicists).
- Chapter 484 (dispensing of optical devices and hearing aids).
- Chapter 486 (physical therapy practice).
- Chapter 490 (psychological services).
- Chapter 491 (clinical, counseling, and psychotherapy services).

Current law[2] prohibits the DOH and the medical boards within the DOH from allowing any person to sit for an examination who has been:

- Convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under ch. 409, F.S.,[3] ch. 817, F.S.,[4] ch. 893, F.S.,[5] 21 U.S.C. ss. 801-970,[6] or 42 U.S.C. ss. 1395-1396,[7] unless the sentence and any subsequent period of probation for such conviction or pleas ended more than 15 years prior to the date of the application;
- Terminated for cause from the Florida Medicaid program unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years; or

[2] *See* s. 456.0635, F.S.
[3] ch. 409, F.S., "Social and Economic Assistance," is in Title XXX, "Social Welfare," and includes the Florida Medicaid and Kidcare programs, among other programs.
[4] ch. 817, F.S., "Fraudulent Practices," is in Title XLVI, "Crimes."
[5] ch. 893, F.S., "Drug Abuse Prevention and Control," is in Title XLVI, "Crimes."
[6] 21 U.S.C. ss. 801-970 create the Controlled Substances Act, which regulates the registration of manufacturers, distributors, and dispensers of controlled substances at the federal level.
[7] 42 U.S.C. ss. 1395-1396 create the federal Medicare, Medicaid, and Children's Health Insurance programs.

- Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from any other state Medicaid program or the federal Medicare program, unless the applicant has been in good standing with a state Medicaid program or the federal Medicare program for the most recent 5 years and the termination occurred at least 20 years prior to the date of application.

The DOH and the medical boards must refuse to issue or renew a license, certificate, or registration to an applicant, or person affiliated with that applicant, who has violated any of the provisions listed above.

Implementation of Current Law by the Department of Health
Neither the DOH nor the boards deny licensure based on an applicant's termination for cause from the federal Medicare program because federal law does not implement such terminations "for cause." The DOH does not deny licensure renewal based on an applicant's termination for cause from the federal Medicare program for the same reason.

The DOH applies the denial of renewals to offenses occurring after July 1, 2009, when s. 456.0635, F.S., took effect.

III. Effect of Proposed Changes:

Section 1 amends s. 456.0635, F.S. The catch line is changed from "Medicaid fraud; disqualification for license, certificate, or registration," to "Health care fraud; disqualification for license, certificate, or registration." Other references in the statute to the general subject of "Medicaid fraud" are changed to "health care fraud."

The bill separates the disqualifications for licensure, certification, or registration from those relating to licensure renewal into two different statutory subsections.

The bill expands the current provisions that require a board or the DOH to refuse to admit a candidate to any examination and to refuse to issue a license to any applicant who has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under ch. 409, F.S., ch. 817, F.S., or ch. 893, F.S., to include similar felony offenses committed in another state or jurisdiction. The bill deletes the provision in current law that nullifies the prohibition if the sentence and probation period ended more than 15 years prior to the date of application, and replaces it with the following provisions:

- For felonies of the first or second degree, the prohibition expires when the sentence and probation period have ended more than 15 years before the date of application.
- For felonies of the third degree, the prohibition expires when the sentence and probation period have ended more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a), F.S.[8]

[8] Section 893.13(6)(a), F.S., makes it unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or to be in actual or constructive possession of a controlled substance except as otherwise authorized by ch. 893, F.S.

- For felonies of the third degree under s. 893.13(6)(a), F.S., the prohibition expires when the sentence and probation period have ended more than 5 years before the date of application.

For felonies in which the defendant entered a plea of guilty or nolo contendere in an agreement with the court to enter a pretrial intervention or drug diversion program, the bill prohibits the DOH from approving or denying the application for a license, certificate, or registration until the final resolution of the case.

The bill requires a board or the DOH to refuse to admit a candidate to any examination and to refuse to issue a license to any applicant who has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970 or 42 U.S.C. ss. 1395-1396, unless the sentence and any probation period for such conviction or plea ended more than 15 years before the date of the application.

The bill deletes reference to "terminated for cause" from the federal Medicare program as grounds for which the DOH is required to deny a license and creates a new standard to exclude applicants currently listed on the U.S. Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

The bill specifies that the prohibitions above relating to examination, licensure, certification, and registration do not apply to applicants for initial licensure or certification who were enrolled in an educational or training program on or before July 1, 2010, which was recognized by a board, or by the DOH if there is no applicable board, and who applied for licensure after July 1, 2010.

The bill creates a new statutory subsection relating to licensure *renewal* that requires denial of renewal for the same felony offenses referenced above, except that in order to trigger the renewal prohibition, the conviction or plea must have occurred after July 1, 2010. The bill includes the same provisions for denying licensure renewal as those described above for examination, licensure, certification, and registration, relative to exclusion from the Medicare program and termination from Medicaid programs in Florida or other states, as well as identical provisions regarding applicants who have entered a pretrial intervention or drug diversion program.

The bill requires the DOH to adopt rules to administer the provisions related to denial of licensure renewal.

Section 2 creates an effective date for the bill of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will affect the ability of certain applicants to become licensed or to renew a license and thereby affect their ability to qualify or remain qualified for gainful employment within certain occupations regulated by the DOH. The bill will apply the statutory licensure prohibitions to persons with felony convictions or pleas effective in other states the same as they are applied to persons with felony convictions or pleas effective in Florida. This will create more equity in the application of the law and should result in more mandatory denials among persons within that demographic. However, the bill also relaxes the standards in other ways, such as the "sliding scale" for the prohibition's duration based on the type of felony, which should result in fewer mandatory denials under those circumstances.

C. Government Sector Impact:

The DOH will experience a recurring increase in workload to implement the bill and non-recurring costs for rule-making, the costs of which are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Currently, s. 120.60, F.S., requires the DOH to approve or deny an application within 90 days. The bill tolls the time for persons in a court-approved pretrial intervention or drug diversion program. For renewal applications, renewals that are not approved are classified as delinquent and then become null and void under s. 456.036, F.S. Under the bill, if the DOH is prevented from approving or denying a renewal application until final resolution of the court case, the result would be the same as a denial if the license becomes null and void due to lack of approval.

The bill requires the DOH to adopt rules to administer the bill's provisions related to denial of licensure renewal but not with regard to licensure applications. Rule-making related to denial of

licensure renewal appears unnecessary because the renewal standards are explicitly provided in the bill.

The bill contains no guidance or standards for determining what constitutes a "similar felony offense committed in another state or jurisdiction." Criminal statutes are different in every state. When licensure or renewal is denied based on a "similar" felony committed in another state or jurisdiction, the applicant may be encouraged to challenge the denial and argue that without specific standards within Florida law, the characteristics of the out-of-state felony cannot be justified by the DOH in keeping with legislative intent as being adequately "similar" to any certain offense within chs. 409, 817, or 893, F.S. However, a counterargument is that there are numerous statutes which require a determination whether an offense in another jurisdiction is similar to a Florida offense and that do not provide any guidance or standards for making that determination.[9]

Section 456.0635(3), F.S., as created by the bill, refers to a board renewing a license, certification, or registration. However, only the DOH renews licenses – boards do not.

VIII. Additional Information:

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

None.

B. Amendments:

None.

[9] *See e.g.*, ss. 39.0139, 311.12, 322.03, 373.6055, 393.0655, 408.809, 430.0402,435.03, 435.04, 464.018, 468.3101, 744.474, 775.21, 943.0435, 948.30, 985.644, and 1012.467.

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete lines 594 - 605
and insert:
(6) A mixture, as defined in s. 893.02, containing any controlled substance described in this section includes, but is not limited to, a solution or a dosage unit, including but not limited to, a pill or tablet, containing a controlled substance. For the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance described in this section, the weight of the controlled substance is the total weight of the mixture, including the

controlled substance and any other substance in the mixture. However, if the mixture is a prescription drug as defined in s. 499.003(43) and the weight of the controlled substance can be identified using the national drug code, the weight of the controlled substance may not include any other substance in the mixture. If there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Between lines 612 and 613
insert:

Section 2. Section 945.091, Florida Statutes, is amended to read:

945.091 Extension of the limits of confinement; supervised reentry; restitution by employed inmates.—

(1) The department may adopt rules permitting the extension of the limits of the place of confinement of an inmate as to whom there is reasonable cause to believe that the inmate will honor his or her trust by authorizing the inmate, under

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prescribed conditions and following investigation, risk assessment, and approval by the secretary, or the secretary's designee, who shall maintain a written record of such action, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to:

(a) Visit, for a specified period, a specifically designated place or places:

1. For the purpose of visiting a dying relative, attending the funeral of a relative, or arranging for employment or for a suitable residence for use when released;

2. To otherwise aid in the rehabilitation of the inmate and his or her successful transition into the community; or

3. For another compelling reason consistent with the public interest,

and return to the same or another institution or facility designated by the department ~~Department of Corrections~~.

(b) Work at paid employment, participate in an education or a training program, or voluntarily serve a public or nonprofit agency or faith-based service group in the community, while continuing as an inmate of the institution or facility in which the inmate is confined, except during the hours of his or her employment, education, training, or service and traveling thereto and therefrom. An inmate may travel to and from his or her place of employment, education, or training only by means of walking, bicycling, or using public transportation or transportation that is provided by a family member or employer. Contingent upon specific appropriations, the department may transport an inmate in a state-owned vehicle if the inmate is

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unable to obtain other means of travel to his or her place of employment, education, or training.

1. An inmate may participate in paid employment only during the last 36 months of his or her confinement, unless sooner requested by the Parole Commission or the Control Release Authority. To the extent possible, the department shall place inmates in the community to perform paid employment.

2. While working at paid employment and residing in the facility, an inmate may apply for placement at a contracted substance abuse transition housing program. The transition assistance specialist shall inform the inmate of program availability and assess the inmate's need and suitability for transition housing assistance. If an inmate is approved for placement, the specialist shall assist the inmate. If an inmate requests and is approved for placement in a contracted faith-based substance abuse transition housing program, the specialist must consult with the chaplain before ~~prior to~~ such placement. The department shall ensure that an inmate's faith orientation, or lack thereof, will not be considered in determining admission to a faith-based program and that the program does not attempt to convert an inmate toward a particular faith or religious preference.

(c) Participate in a residential or nonresidential rehabilitative program operated by a public or private ~~nonprofit~~ agency, including faith-based service groups, with which the department has contracted for the treatment of the ~~such~~ inmate. Sections ~~The provisions of ss.~~ 216.311 and 287.057 ~~shall~~ apply to all contracts between the department and any private entity providing such services. The department shall require the ~~such~~

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agency to provide appropriate supervision of inmates participating in the ~~such~~ program. The department is authorized to terminate any inmate's participation in the program if the ~~such~~ inmate fails to demonstrate satisfactory progress in the program as established by departmental rules.

(d) Participate in a supervised reentry program in which the inmate is housed in the community while working at paid employment or participating in other programs that are approved by the department. The inmate shall reside at a department-approved residence while retaining status as an inmate in the supervised reentry program.

1. An inmate may participate in the supervised reentry program only during the last 14 months of his or her confinement.

2. An inmate may participate in the supervised reentry program only after residing at a work release center for at least 6 months.

3. Supervised reentry program participants must comply with reporting, drug testing, and other requirements established by the department.

4. An inmate who fails to abide by the conditions set forth in the supervised reentry program is subject to removal from the program and to disciplinary action.

5. An inmate in the supervised reentry program may travel to and from his or her department-approved activities only by means of transportation approved by the department.

6. The inmate must pay the department for the cost of his or her supervision in accordance with rules set forth by the department. The inmate shall also pay the cost of any treatment

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program in which he or she is participating.

7. An inmate is subject to the rules of conduct established by the department and, after a violation, may have sanctions imposed against him or her, including loss of privileges, restrictions, disciplinary confinement, forfeiture of gain-time or the right to earn gain-time in the future, and program termination.

8. An inmate participating in the supervised reentry program may not be included in the bed count for purposes of determining total capacity as defined in s. 944.023(1).

9. The department shall adopt rules for the operation of the supervised reentry program.

(2) In order for participating inmates to acquire meaningful work skills and develop an employment history, the department is encouraged to approve an inmate's participation in paid employment programs under paragraphs (1)(b)-(d) in such a manner that the inmate moves into the community not less than 6 months before the expiration of the inmate's sentence.

(3) ~~(2)~~ Each inmate who demonstrates college-level aptitudes by satisfactory evidence of successful completion of college-level academic coursework may be provided the opportunity to participate in college-level academic programs that ~~which~~ may be offered at community colleges or universities. The inmate is personally responsible for the payment of all student fees incurred.

(4) ~~(3)~~ The department may adopt regulations as to the eligibility of inmates for the extension of confinement, the disbursement of any earnings of these inmates, or the entering into of agreements between itself and any city or county or


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federal agency for the housing of these inmates in a local place of confinement. However, a ~~no~~ person convicted of sexual battery pursuant to s. 794.011 is not eligible for any extension of the limits of confinement under this section.

(5)~~(4)~~ The willful failure of an inmate to remain within the extended limits of his or her confinement or to return within the time prescribed to the place of confinement designated by the department is ~~shall be deemed as~~ an escape from the custody of the department and is ~~shall be~~ punishable as prescribed by law.

(6)~~(5)~~ ~~The provisions of~~ This section does ~~shall~~ not ~~be deemed to~~ authorize any inmate who has been convicted of any murder, manslaughter, sexual battery, robbery, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, or aircraft piracy, or any attempt to commit the aforementioned crimes, to attend any classes at any state community college or any university that ~~which~~ is a part of the State University System.

(7)~~(6)~~(a) The department shall require inmates working at paid employment as provided in paragraph (1)(b) or paragraph (1)(d) to use a portion of the employment proceeds to provide restitution to the aggrieved party for the damage or loss caused by the offense of the inmate, in an amount to be determined by the department, unless the department finds clear and compelling reasons not to order such restitution. If restitution or partial restitution is not ordered, the department shall state on the record in detail the reasons therefor.

(b) An offender who is required to provide restitution or reparation may petition the circuit court to amend the amount of

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restitution or reparation required or to revise the schedule of repayment established by the department or the Parole Commission.

(8) ~~(7)~~ The department shall document and account for all forms for disciplinary reports for inmates placed on extended limits of confinement, which shall include, but are not ~~be~~ limited to, all violations of rules of conduct, the rule or rules violated, the nature of punishment administered, the authority ordering such punishment, and the duration of time during which the inmate was subjected to confinement.

(9) ~~(8)~~ (a) The department may ~~is authorized to~~ levy fines only through disciplinary reports and only against inmates placed on extended limits of confinement. Major and minor infractions and their respective punishments for inmates placed on extended limits of confinement shall be defined by the rules of the department, provided that a ~~any~~ fine may ~~shall~~ not exceed $50 for each infraction deemed to be minor and $100 for each infraction deemed to be major. Such fines shall be deposited in the General Revenue Fund, and a receipt shall be given to the inmate.

(b) When the chief correctional officer determines that a fine would be an appropriate punishment for a violation of the rules of the department, both the determination of guilt and the amount of the fine shall be determined by the disciplinary committee pursuant to the method prescribed in s. 944.28(2)(c).

(c) The department shall adopt ~~develop~~ rules defining the policies and procedures for the administering of such fines.

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

474904

And the title is amended as follows:

Delete lines 2 - 5

and insert:

An act relating to criminal justice; amending s. 893.135, F.S.; removing all references to imposing mandatory minimum sentences for defendants convicted of trafficking in controlled substances; amending s. 945.091, F.S.; providing legislative intent to encourage the Department of Corrections, to the extent possible, to place inmates in the community to perform paid employment for community work; providing that an inmate may leave the confinement of prison to participate in a supervised reentry program in which the inmate is housed in the community while working at paid employment or participating in other programs that are approved by the department; requiring the inmate to live at a department-approved residence while participating in the supervised reentry program; specifying the conditions for participating in the supervised reentry program; requiring that the department adopt rules to operate the supervised reentry program; providing legislative intent to encourage the department to place inmates in paid employment in the community for not less than 6 months before the inmate’s sentence expires; defining the


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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment to Amendment (474904)

In title, delete line 190
and insert:

An act relating to sentences of inmates; amending s.

803808

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Between lines 773 and 774
insert:
Section 3. Paragraph (b) of subsection (4) of section 944.275, Florida Statutes, is amended to read:
944.275 Gain-time.—
(4)
(b) For each month in which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities, the department may grant incentive gain-time in accordance with this paragraph. The rate

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of incentive gain-time in effect on the date the inmate committed the offense which resulted in his or her incarceration shall be the inmate's rate of eligibility to earn incentive gain-time throughout the period of incarceration and shall not be altered by a subsequent change in the severity level of the offense for which the inmate was sentenced.

1. For sentences imposed for offenses committed prior to January 1, 1994, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

2. For sentences imposed for offenses committed on or after January 1, 1994, and before October 1, 1995:

a. For offenses ranked in offense severity levels 1 through 7, under s. 921.0012 or s. 921.0013, up to 25 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

b. For offenses ranked in offense severity levels 8, 9, and 10, under s. 921.0012 or s. 921.0013, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

3. For sentences imposed for offenses committed on or after October 1, 1995, the department may grant up to 10 days per month of incentive gain-time, except that no prisoner is eligible to earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed. For purposes of this subparagraph, credits awarded by the court for time physically incarcerated shall be credited toward satisfaction of 85 percent

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of the sentence imposed. Except as provided by this section, a prisoner shall not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency.

4. For sentences imposed for offenses committed on or after October 1, 2011, the department may grant up to 10 days per month of incentive gain-time, except that a prisoner is not eligible to earn gain-time in an amount that would cause a sentence to expire, end, or terminate, or would result in a prisoner's release, before serving the following minimum percentage of sentence imposed:

a. Ninety-two percent of the sentenced imposed for a prisoner sentenced for committing a violent offense and who has one or more prior felony convictions.

b. Eighty-seven percent of the sentenced imposed for a prisoner sentenced for committing a violent offense and who has no prior felony convictions.

c. Eighty-five percent of the sentenced imposed for a prisoner sentenced for committing a nonviolent offense and who has one or more prior felony convictions.

d. Sixty-five percent of the sentenced imposed for a prisoner sentenced for committing a nonviolent offense and who has no prior felony convictions.

For the purposes of this subparagraph, the term "violent offense" has the same meaning as the term "forcible felony" as

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defined in s. 776.08.

Section 4. For the purpose of incorporating the amendment made by this act to section 944.275, Florida Statutes, in a reference thereto, paragraph (k) of subsection (4) of section 775.084, Florida Statutes, is reenacted to read:

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

(4)

(k)1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in s. 944.275(4)(b).

2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release granted pursuant to s. 947.149.

3. For an offense committed on or after July 1, 1999, a defendant sentenced under this section as a three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

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

And the title is amended as follows:

Delete line 76

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and insert:

amending s. 944.275, F.S.; authorizing the Department of Corrections to grant up to 10 days per month of incentive gain-time applicable to sentences imposed for offenses committed on or after a specified date; providing an exception under certain circumstances; reenacting s. 775.084(4)(k), F.S., relating to violent career criminals, to incorporate the amendment made to s. 944.275, F.S., in a reference thereto; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 1334
INTRODUCER:	Senator Bogdanoff
SUBJECT:	Sentencing of Inmates
DATE:	March 23, 2011 REVISED:

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

I. Summary:

This bill removes the mandatory minimum terms of imprisonment related to all drug trafficking provisions listed in s. 893.135, F.S. It also creates a new section of statute to authorize the Department of Corrections (department) to develop and administer a nonviolent offender re-entry program. This program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, rehabilitate the offender, and reduce recidivism.

This bill substantially amends section 893.135 of the Florida Statutes and creates a new section of statute.

II. Present Situation:

Sentencing and Minimum Mandatory Sentences

Criminal Punishment Code

The Criminal Punishment Code (Code)[1] is Florida's framework for determining permissible sentencing ranges for noncapital felonies. Non-capital felonies sentenced under the Code receive an offense severity level ranking from Level 1 to Level 10. Points are assigned and accrue based upon the level assigned. Points may also be assigned and accrue for other factors, and there may also be multiplying factors. Total sentence points are entered into a mathematical calculation to determine the lowest permissible sentence. The permissible sentencing range is generally the lowest permissible sentence scored up to and including the maximum penalty provided under

[1] Sections 921.002 - 921.0027, F.S.

s. 775.082, F.S., for the primary offense and any additional offenses before the court for sentencing. The court is permitted to impose sentences concurrently or consecutively. The Code requires a minimum mandatory sentence to be imposed, unless the lowest permissible sentence scored is greater than the mandatory.

The Code includes a list of 'mitigating' factors. If a mitigating factor is found by the sentencing court, the court may decrease an offender's sentence below the lowest permissible sentence. A minimum mandatory sentence is not subject to these mitigating factors.[2]

Drug Trafficking Mandatory Minimum Sentences

Florida's drug trafficking laws, found in s. 893.135, F.S., contain minimum mandatory terms of imprisonment. Each controlled substance has a different threshold to trigger felony trafficking charges, and requires increasingly significant sentences for a greater volume of drug.

The trafficking offenses involve the knowing possession, purchase, sale, manufacture, delivery, or importation into Florida of certain controlled substances within specified weight ranges. A notable feature is that prosecutors are only required to prove knowing possession, not possession with intent to sell, etc.

The table below lists the controlled substances in s. 893.135, F.S., along with their associated minimum mandatory sentences for particular amounts.[3]

CANNABIS		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
>25 and < 2000 pounds or ≥300 and ≥ 2000 plants	3 years	$25,000
≥2000 and < 10,000 pounds or ≥ 2000 and ≤10,000 plants	7 years	$50,000
≥10,000 pounds or ≥ 10,000 plants	15 years	$200,000
COCAINE		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥28 and < 200 grams	3 years	$50,000
≥200 and < 400 grams	7 years	$100,000
≥400 grams and <150 kilograms	15 years	$250,000
≥150 kilograms	Life	

[2] *See e.g., State v. Vanderhoff*, --- So.3d ----, 2009 WL 1703267 (Fla. 5th DCA 2009).

[3] If the controlled substance appears in a mixture, the mixture is weighed and treated as the weight of the controlled substance. For example, "street cocaine" is frequently adulterated (cut) with other agents, which increases the quantity of cocaine available for sale and the seller's profits. In the case of painkillers for which trafficking is proscribed, like hydrocodone, the weight of the tablets/pills containing the hydrocodone, etc., is the total weight of a tablet/pill (which includes everything that makes up the tablet/pill) multiplied by the number of tablets/pills possessed.[3]

MORPHINE, OPIUM, OXYCODONE, HYDROCODONE, HYDROMORPHONE, HEROIN and FLUNITRAZEPAM		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥4 and <14 grams	3 years	$50,000
≥14 and <28 grams	15 years	$100,000
≥28 grams and <30 kilograms	25 years	$500,000
≥30 kilograms	Life	
PHENCYCLIDINE		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥28 and <200 grams	3 years	$50,000
≥200 and <400 grams	7 years	$100,000
≥400 grams	15 years	$250,000
METHAQUALONE		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥200 and <5 kilograms	3 years	$50,000
≥5 and <25 kilograms	7 years	$100,000
≥25 kilograms	15 years	$250,000
AMPHETAMINE AND METHAMPHETAMINE		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥14 and <28 grams	3 years	$50,000
≥28 and <200 grams	7 years	$100,000
≥200 grams	15 years	$250,000
GAMMA-HYDROXYBUTYRIC ACID (GHB), GAMMA-BUTYROLACTONE (GBL) and 1,4-BUTANEDIOL		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥1 and <5 kilograms	3 years	$50,000
≥5 and <10 kilograms	7 years	$100,000
≥10 kilograms	15 years	$250,000
PHENETHYLAMINES[4]		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥10 and <200 grams	3 years	$50,000
≥200 and <400 grams	7 years	$100,000
≥400 grams	15 years	$250,000
LYSERGIC ACID DIETHYLAMIDE (LSD)[5]		
Amount	***Mandatory Prison Term***	***Mandatory Fine***
≥1 and <5 grams	3 years	$50,000
≥5 and <7 grams	7 years	$100,000
≥ 7 grams	15 years	$500,000

[4] These are described in s. 893.03(1)(a) or (c), F.S.
[5] Section 893.03(1)(c), F.S., lists LSD as a Schedule I drug.

Florida law authorizes a sentence below the mandatory in two instances: the defendant is sentenced as a youthful offender;[6] or the primary offense is a Level 7 or Level 8 trafficking offense and the judge approves the State's motion to reduce or suspend the defendant's sentence based upon the defendant providing substantial assistance.[7]

Convictions for a violation of s. 893.135, F.S., are almost always the result of a plea rather than a trial. Although a prosecutor may charge a trafficking offense, the case may be dropped or the original trafficking charge may be dropped or dropped in exchange for a plea to a trafficking charge with a lesser mandatory, a non-mandatory drug charge (attempted trafficking[8] or some other non-mandatory drug charge), or another non-mandatory charge.

A person sentenced to a mandatory minimum term of imprisonment under s. 893.135, F.S., is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, F.S., prior to serving the mandatory minimum term of imprisonment.[9]

The following chart reflects the admissions to prison for the past two fiscal years where the primary offense of the inmate consists of a drug trafficking mandatory sentence.[10]

Table of Admission Year by Mandatory Minimum Period						
Admission Year	***Mandatory Minimum (Years)***					
	3	***7***	***15***	***25***	***Life***	***Total***
FY 2008-09	*1395*	*130*	*232*	*105*	*1*	*1863*
FY 2009-10	*1485*	*100*	*313*	*140*	*3*	*2041*
Total	*2880*	*230*	*545*	*245*	*4*	*3904*

The Policy Debate Over Minimum Mandatory Sentencing for Drug Trafficking

Much attention has been given to the policy and societal implication of minimum mandatory sentences for certain drug offenses. There seem to be two primary concerns: (1) a concern about the policy of restricting judicial discretion in sentencing, with specific attention focused on particular cases in which application of a minimum mandatory has led to unjust results; and (2) a concern that unlawful possession or purchase of relatively small numbers of tablets/pills containing certain painkillers, like hydrocodone, may result in trafficking penalties, including mandatories. A thorough discussion of these and other issues relating to minimum mandatories for drug offenses is found in Florida Senate Interim Report 2010-109, "A Policy Analysis of Minimum Mandatory Sentencing for Drug Traffickers."[11]

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[6] Section 958.04, F.S. *See State v. Dishman*, 5 So.3d 773 (Fla. 4th DCA 2009) and *Inman v. State*, 842 So.2d 862 (Fla. 2d DCA 2003).

[7] Section 893.135(4), F.S. This mitigation cannot occur without the State's motion. *State v. Agerton*, 523 So.2d 1241 (Fla. 5th DCA 1988), *rev. den.*, 531 So.2d 1352 (Fla.1988).

[8] Attempted trafficking does not call for a mandatory sentence, though conspiracy to traffic does. ss. 777.04 and 893.135(5), F.S. *See Suarez v. State*, 635 So. 2d 154 (Fla. 2d DCA 1994) and *Chudeausz v. State*, 508 So.2d 418 (Fla. 5th DCA 1987).

[9] Section 893.135(3), F.S.

[10] Department of Corrections Analysis of Senate Bill 1334, p. 1.

[11] The interim project report is available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-109cj.pdf , last viewed on March 24, 2011.

Reentry Programs for Nonviolent Offenders

The department reports that 26.5 percent of the inmates admitted to prison during Fiscal Year 2009-2010 had been convicted of a drug crime.[12] Almost two-thirds of Florida inmates who enter prison for any crime also have a substance abuse problem, and more than 80 percent of those who could benefit from treatment are released without it.[13] The lack of treatment is largely due to funding constraints.

The Florida TaxWatch Government Cost Savings Task Force found that "significant savings could be achieved if certain offenders were allowed to receive treatment outside of the confines of prison during the last portion of their prison sentence" and observed that "research shows that programs in the community produce twice the impact on recidivism as the same program behind the walls."[14]

The department currently provides the following re-entry programming to inmates:

- Substance abuse treatment;
- Educational and academic programs;
- Career and technical education; and
- Faith and character-based programs.[15]

Correctional Integrated Needs Assessment System

The department assesses inmates and places them into programs using the Correctional Integrated Needs Assessment System (CINAS), which is based on the "Risk-Needs-Responsivity (RNR)" principle. The RNR principle refers to predicting which inmates have a higher probability of recidivating, and providing appropriate programming and services to higher risk inmates based on their level of need. The services would be focused on "criminogenic needs," which are factors associated with recidivism that can be changed such as lack of education, substance abuse, criminal thinking, and lack of marketable job skills. High risk offenders have multiple risk factors, and the department provides a range of services and interventions to target the specific crime producing needs.[16]

The department reports that CINAS allows it to develop and implement programs that increase the likelihood of successful reentry. It also reports that use of the RNR principle and CINAS "avoids focusing resources on individuals ill-equipped to handle specific behavior problems, and

[12] Department of Corrections' 2009-2010 Agency Statistics, http://www.dc.state.fl.us/pub/annual/0910/stats/im_admis.html, last viewed on March 24, 2011.
[13] "Corrections Rehabilitative Programs Effective, But Serve Only a Portion of the Eligible Population," Office of Program Policy Analysis and Governmental Accountability (OPPAGA) Report No. 07-14 (February 2007), p. 6.
[14] Report and Recommendation of the Florida TaxWatch Government Cost Savings Task Force for Fiscal Year 2011-12 (December 2010), http://www.floridataxwatch.org/resources/pdf/12082010GCTSF.pdf, (last viewed on March 24, 2011).
[15] "Recidivism Reduction Strategic Plan." Fiscal Year 2009-2014. Department of Corrections. http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf (Last accessed on March 18, 2011).
[16] Department of Corrections Analysis of Senate Bill 1334, p. 2.

ensures the most appropriate treatment-setting possible is being assigned, based on an inmate's characteristics."[17]

CINAS is administered to an inmate when he or she is received at the initial parent institution and again after 42 months, with updates conducted every 6 months thereafter to evaluate the inmate's progress and ensure enrollment in needed programs.[18]

Required Transition Training Program

In addition to other programming, the department must provide a 100-Hour Transition Training Program to inmates who are within 12 months of their release.[19] This program offers inmates training in the following:

- Job readiness and life management skills, including goal setting;
- Problem solving and decision making;
- Communication;
- Values clarification;
- Living a healthy lifestyle;
- Family issues;
- Seeking and keeping a job;
- Continuing education;
- Community reentry; and
- Legal responsibilities.[20]

An issue brief prepared by the Senate Criminal Justice Committee in 2008 observed that due to funding constraints, in most cases the transition course was viewed by the inmates on video along with self-study from a textbook. This was less effective than the former method in which the course was taught by an instructor who engaged in interaction with the inmates in a classroom setting, particularly since many inmates had minimal reading skills. At the time of the brief, the department was attempting to reduce the deficiency by developing a workbook designed for self-study and written at a lower reading level.[21]

Drug Offender Probation

The department is also required to develop and administer a drug offender probation program that emphasizes a combination of treatment and intensive community supervision approaches and provides for supervision of offenders in accordance with a specific treatment plan.[22] This program generally uses graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court.[23] These sanctions can include mandatory community service, extended probation, or jail

[17] *Id.*
[18] *Id.*
[19] Section 944.7065, F.S.
[20] *Supra* "Recidivism Reduction Strategic Plan."
[21] "Breaking The Cycle Of Crime: The Department Of Corrections And Re-Entry Programming," Issue Brief 2009-313 (October 2008), p. 2.
[22] Section 948.20(2), F.S.
[23] Section 948.20(1), F.S.

stays. Probationers in this program are subject to probation revocation if they violate any conditions of their probation. This can result in an imposition of any sentence that may have originally been imposed before the offender was placed on probation.[24] In FY 2009-10, 9,928 offenders were on drug offender probation.[25]

III. Effect of Proposed Changes:

Minimum Mandatory Sentences

Section 1 of the bill removes the minimum mandatory sentence requirements for trafficking of controlled substances listed above. The penalty for trafficking in each substance will still remain a first degree felony, which is punishable by up to 30 years in prison and up to a $10,000 fine, in addition to the fines associated with the differing thresholds of drug volume.

The bill also amends s. 893.135(3), F.S., to remove language that prohibits a person convicted of a drug trafficking offense from being eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, F.S., prior to serving the mandatory minimum term of imprisonment.

In addition, the bill allows a judge (upon motion of the state attorney) to defer a sentence or withhold the sentence or adjudication of guilt of a person convicted of a drug trafficking offense if the judge finds the defendant rendered substantial assistance.

Non-Violent Offender Reentry Program

Section 2 of the bill authorizes the department to develop and administer a nonviolent offender reentry program in a secure area within an institution or adjacent to an adult institution. This program is intended to divert nonviolent offenders[26] from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, rehabilitate the offender, and reduce recidivism.

The department reports that 2,100 inmates meet the eligibility criteria for the program. However, available program space and taking rehabilitative benefit into consideration would currently limit the program to 534 inmates. An additional 1,251 inmates from the current inmate population will meet the eligibility criteria once they have completed 50 percent of their sentence.[27]

The bill requires the non-violent offender reentry program to include:

- Prison-based substance abuse treatment
- General education development and adult basic education courses

[24] Section 948.06 (2)(e), F.S.
[25] Department of Corrections, Community Supervision Admissions, 2008-2009 Agency Statistics, http://www.dc.state.fl.us/pub/annual/0809/stats/csa_prior.html (Last accessed on March 18, 2011).
[26] A "nonviolent offender" is defined in the bill as an offender who has been convicted of a third-degree felony offense that is not a forcible felony as defined in s. 776.08, F.S., and who has not been convicted of any offense that requires a person to register as a sexual offender pursuant to s. 943.0435, F.S.
[27] Department of Corrections Analysis of Senate Bill 1334, p. 3.

- Vocational training
- Training in decision-making and personal development, and
- Other rehabilitation programs.

The bill requires that the nonviolent offender serve at least 120 days in the reentry program. Any portion of his or her sentence served before placement in the reentry program does not count as progress toward program completion.

The bill requires the department to screen potential reentry program participants for eligibility criteria to participate in the program. In order to participate, a nonviolent offender must have:

- Served at least one-half of his or her original sentence, and
- Been identified as having a need for substance abuse treatment.

During the screening process, the bill requires the department to consider the offender's criminal history and the possible rehabilitative benefits that substance abuse treatment, educational programming, vocational training, and other rehabilitative programming might have on the offender.

If a nonviolent offender is selected to participate in the program and if space is available in the reentry program, the department must request the sentencing court to approve the offender's participation in the reentry program.

The department must also notify the state attorney that the offender is being considered for placement in the reentry program. The notice must:

- Explain to the state attorney that a proposed reduced period of incarceration, followed by participation in substance abuse treatment and other rehabilitative programming, could produce the same deterrent effect otherwise expected from a lengthy incarceration.
- State that the state attorney may notify the sentencing court in writing of any objection he or she might have if the nonviolent offender is placed in the reentry program.[28]

The bill requires the sentencing court to notify the department in writing of the court's decision to approve or disapprove the requested placement of the nonviolent offender into the re-entry program no later than 28 days after the court receives the department's request to place the offender in the reentry program.[29]

The bill requires a nonviolent offender who had been admitted to the re-entry program to:

- Undergo a full substance abuse assessment to determine his or her substance abuse treatment needs.

[28] The bill requires that the state attorney must notify the sentencing court of his or her objections within 14 days after receiving the notice.
[29] The bill states that the court's failure to notify DOC of the decision within the 28-day period constitutes approval to place the offender into the reentry program.

- Have an educational assessment, using the Test of Adult Basic Education or any other testing instrument approved by the Department of Education.
- Obtain a high school diploma if one has not already been obtained.

The bill requires that assessments of the offender's vocational skills and future career education be provided to the offender as needed and that a periodic reevaluation be made in order to assess the progress of each offender.

If a nonviolent offender becomes unmanageable, the bill authorizes the department to revoke the offender's gain-time and place the offender in disciplinary confinement in accordance with department rule. The offender can be readmitted to the reentry program after completing the ordered discipline[30] unless:

- The offender commits or threatens to commit a violent act;
- The department determines that the offender is unable to participate in the reentry program due to the offender's medical condition;
- The offender's sentence is modified or expires;
- The department reassigns the offender's classification status; or
- The department determines that removing the offender from the reentry program is in the best interest of the offender or the security of the institution.

The bill requires the department to submit a report to the court at least 30 days before the nonviolent offender is scheduled to complete the reentry program. The report must describe the offender's performance in the reentry program. If the performance is satisfactory, the bill requires the court to issue an order modifying the sentence imposed and place the offender on drug offender probation[31] subject to the offender's successful completion of the remainder of the reentry program.[32] If the nonviolent offender violates the conditions of drug offender probation, the bill authorizes the court to revoke probation and impose any sentence that it might have originally imposed.

The bill also authorizes the department to:

- Implement the reentry program to the fullest extent feasible within available resources.
- Submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the extent of implementation of the reentry program and outlining future goals and any recommendation the department has for future legislative action.
- Enter into performance-based contracts with qualified individuals, agencies, or corporations for the provision of any or all of the services for the reentry program.

[30] The bill specifies that any period of time during which the offender is unable to participate in the reentry program shall be excluded from the specified time requirements in the reentry program.
[31] The bill provides that if an offender being released intends to reside in a county that has established a postadjudicatory drug court program as described in s. 397.334, F.S., the sentencing court may require the offender to successfully complete the postadjudicatory drug court program as a condition of drug offender probation.
[32] The bill provides that the term of drug offender probation may include placement in a community residential or nonresidential substance abuse treatment facility under the jurisdiction of the department or the Department of Children and Family Services or any public or private entity providing such services.

- Establish a system of incentives within the reentry program which the department may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.
- Develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and shall report the recidivism rate in its annual report of the program.
- Adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer the reentry program.

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 has not met to discuss the impact of the bill. The department reports that the removal of the mandatory minimum sentences for defendants trafficking in controlled substances will likely have an overall positive fiscal impact on the department.[33]

Because participation in the bill's nonviolent offender re-entry program hinges on an offender being eligible, the department's selection, and judicial approval, the precise impact of the bill is unknown. However, the bill will likely result in cost savings to the state.

[33] The Department of Corrections 2011 Analysis of HB 917.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 1390
INTRODUCER:	Senator Dockery
SUBJECT:	Supervised Reentry Programs for Inmates
DATE:	March 22, 2011
REVISED:	

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

I. Summary:

This bill expands the scope of the current community work release program administered by the Department of Corrections (department) to create a supervised reentry program. It would allow the department to place an inmate in paid employment, or in suitable programs approved by the department, while he or she lives in a department-approved residence within the community. The bill also expresses the Legislature's intent that eligible inmates enter this program at least six months before their sentence expires.

This bill substantially amends section 945.091 of the Florida Statutes.

II. Present Situation:

Extension of the Limits of Confinement

Section 945.091, F.S., gives the department authority to extend the limits of an inmate's confinement for certain purposes. The department makes the determination of whether it is appropriate to extend the limits of confinement for a particular inmate. Extension may be granted to:

- Allow a trusted inmate to go to a specifically designated place or places for a specified period of time for the purpose of: (1) visiting a dying relative or attending a relative's funeral; (2) arranging for post-release employment or residence; (3) aiding the inmate's rehabilitation and successful transition back into the community; or (4) another compelling reason in the public interest (s. 945.091(1)(a), F.S.).
- Allow an inmate to work at paid employment, participate in an education or training program, or volunteer with a public or nonprofit agency or faith-based service group in the

community while still being confined by the department when not involved in any of the activities (s. 945.091(1)(b), F.S.).

- Allow an inmate to participate in a residential or nonresidential rehabilitative program operated by a public or private nonprofit agency, including faith-based service groups, with which the department has contracted (s. 945.091(1)(c), F.S.).
- Allow an inmate with college-level aptitude to attend classes at a local community college or university (s. 945.091(2), F.S.).

There are three statutory disqualifications from participation in extension of the limits of confinement: (1) an inmate who has been convicted of sexual battery under s. 794.011, F.S., is ineligible for any type of extension of limits of confinement[1]; (2) an inmate who has been convicted of escape under s. 944.40, F.S., is ineligible for any work release program[2]; and (3) an inmate who has been convicted of committing or attempting to commit murder, manslaughter, sexual battery, robbery, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, aircraft piracy, is ineligible to attend classes at any state community college or university that is part of the State University System.[3]

Work Release

As of February 28, 2011, the department had 33 community work release facilities ranging in size from 15 inmates at Shisa House East to 271 inmates at the Largo Residential Re-Entry Center.[4] These facilities are located in areas where the inmate will have access to places of employment. They do not have secure perimeters, but inmates are required to remain at the facility except when they are working or traveling to or from their place of employment. There are additional reasons for which an inmate may be allowed to leave the facility for a limited time to go to a designated place, such as participating in an Alcoholics Anonymous meeting.

Inmates have participated in some form of work release since the inception of community corrections centers in 1971. The table below reflects that while the number of participants in work release programs has grown, the percentage of participants relative to the total inmate population has shrunk. It can also be seen that both the number of participant and the participation ratio have increased in recent years.[5]

[1] Section 945.091(3), F.S.
[2] Section 945.092, F.S.
[3] Section 945.091(5), F.S. Florida Senate Interim Project Report 2004-127, January 2004, "A Review of the Department of Corrections' Inmate Work Release Law"
[4] "End-of-Month Florida Prison Populations by Facility, February 2011," http://www.dc.state.fl.us/pub/pop/facility/index.html , last viewed on March 23, 2011. One of the 33 centers, the Suncoast Work Release Center for male inmates, has not housed inmates in recent months.
[5] The table reflects the total inmate population and the number of inmates in community correctional centers/work release centers as of June 30 of the cited year, except as noted. Inmates who work at a facility in a support capacity but do not participate in a work release program are included. The data was compiled from Department of Corrections' Annual Reports and the department's end-of-month population figures.

DATE	INMATES IN WORK RELEASE FACILITIES	TOTAL INMATE POPULATION	PERCENTAGE IN WORK RELEASE FACILITIES
1974	1168	11205	10.4%
1976	1819	16716	10.9%
1980	1831	19617	9.3%
1995	2616	61478	4.3%
2000	2309	71233	3.2%
2005	2630	84901	3.1%
2010	3857	102232	3.8%
28 Feb 2011	3729	101833	3.7%

The department has adopted additional eligibility requirements for program participation as permitted by s. 945.091(3), F.S. These requirements include further disqualifying criteria, such as having been terminated from community work release, a center work assignment, or a transition program for disciplinary reasons during the current confinement.[6] An inmate must be in the department's custody for at least 60 days prior to placement in paid employment, and participation by most inmates is limited to the last 14 months of confinement.[7]

Department personnel help the community work release inmate establish a plan for disbursement of earnings based upon the inmates needs, responsibilities, and financial obligations. Key components of the earnings disbursement plan include the following based upon the inmate's net income:

- At least 10 percent must be placed in savings to be disbursed upon release.
- At least 10 percent must go toward support of any dependents.
- At least 10 percent must go toward any victim restitution.
- 55 percent must be paid to the department for subsistence, but the amount may not exceed the actual cost of the inmate's incarceration.[8]

Expansion of work release programs is one of the measures recommended in the Report and Recommendation of the Florida TaxWatch Government Cost Savings Task Force for Fiscal Year 2011-12.[9]

III. Effect of Proposed Changes:

This bill is based upon a proposal for legislation that was advanced by then-Secretary of Corrections McDonough at two separate hearings of the Criminal and Civil Justice Appropriations Committee on August 28, 2007 and December 13, 2007. A substantively identical bill (SB 1990) was passed by the Criminal Justice Committee in 2008.

[6] The disqualifiers are set forth in Rule 33-601.602(2)(a), F.A.C.
[7] Rule 33-601.602(2)(b), F.A.C. Section 945.091(b)(1), F.S., requires that an inmate be within the last 36 months of his or her confinement to participate in a work release program.
[8] The full criteria for disposition of earnings are set forth in Rule 33-601.602(11), F.A.C.
[9] http://www.floridataxwatch.org/resources/pdf/12082010GCTSF.pdf , (last viewed on March 23, 2011).

The bill creates a supervised reentry program that would allow approved inmates to be housed at a department-approved residence in the community while working at paid employment or participating in other activities approved by the department. An inmate would be eligible to participate in the supervised reentry program only after residing at a work release center for at least 6 months, and participation would be limited to the last 14 months of the inmate's confinement. The bill encourages placement of an eligible inmate in the supervised release program not less than 6 months prior to release.[10]

Inmates in the supervised release program will be required to comply with reporting, drug testing, and other requirements established by the department. An inmate who violates the program's conditions can face disciplinary action, removal from the program, or both. The department's rules allow the department to apply more subjective criteria for removal from a community release program, including: (1) the receipt of information concerning the inmate that will have an adverse impact on the safety and security of the inmate, the department, or the community; and (2) having reason to believe the inmate will honor the department's trust.[11]

The bill requires inmates in the supervised reentry program to go to and from approved activities by means of transportation that is approved by the department. This allows the department the leeway to approve means of transportation other than "walking, bicycling, or using public transportation or transportation that is provided by a family member or employer" as is required of inmates on community work release.[12]

Inmates in the supervised reentry program would be required to pay the department for the costs of supervision in accordance with department rules, and to pay for the cost of any treatment programs in which he or she is participating.

The bill provides that inmates in the supervised reentry program will not be included in the bed count for purposes of determining total capacity of the state correctional system as defined in s. 944.023(1), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[10] Because department rule limits most inmates from beginning community work release before the last 14 months of confinement, the requirement to reside at a work release center for at least 6 months prior to entering a supervised reentry program will effectively limit participation to the last 8 months of confinement unless the inmate had been assigned to the work release center in a support capacity.
[11] Rule 33-601.602(13), F.A.C.
[12] Section 945.021(1)(b), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Inmates will be given the opportunity to work with employers who may serve as future employers or business references when inmates return to the community after serving their sentence. This may allow inmates to find employment more easily after incarceration.

C. Government Sector Impact:

Placement in the supervised reentry program would free up beds at a work release center, which could be filled by an inmate in prison who is eligible for community work release. Therefore, the supervised reentry program would result in moving inmates from a high-cost bed in a correctional institution to a much less costly assignment.

The department did not provide an analysis of the bill or information as to its fiscal impact. However, it identified 417 inmates in work release centers who currently meet the timelines for participation in the supervised reentry program. With this number as a baseline, the table below reflects the savings that could be achieved by implementing the program:

Eligible Inmates Who Find Department-Approved Housing	Number of Inmates	Per Diem Savings for Each Inmate[13]	Annual Savings
100%	417	$33.26	$5,062,338
75%	313	$33.26	$3,799,789
50%	208	$33.26	$2,525,099
25%	104	$33.26	$1,262,550

No cost is attributed to the supervised reentry program because the bill requires inmates in the program to pay the costs of their own supervision. It is likely, though, that there would be a small cost that would be unaccounted for by the inmate's contribution. Of course, any savings would also be reduced by any lag time for replacement as inmates leave the program.

[13] In its analysis of Senate Bill 144, the department indicated that $33.26 is the per diem savings for reducing the prison population by a number of inmates that is enough to support closing a dormitory but not enough to close a facility. *See* Department of Corrections Analysis of Senate Bill 144, p. 9.

VI. Technical Deficiencies:

It is unclear whether the bill's specific provisions for removing an inmate from the supervised reentry program would prevent the department from applying more subjective criteria that it currently applies for removal from a community release program.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 1850
INTRODUCER:	Senator Evers
SUBJECT:	Juvenile Justice Reform
DATE:	March 21, 2011 REVISED:

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

I. Summary:

This bill makes changes to the juvenile justice chapter, along with conforming changes to the "Comprehensive Child and Adolescent Mental Health Services Act" in an effort to enhance services for youth in the juvenile justice system. Specifically, the bill:

- Amends the definition of "child or adolescent at risk of emotional disturbance" to include the additional risk factor of "being 9 years of age or younger at the time of referral for a delinquent act;"
- Encourages the diversion of youth nine years of age or younger who are found by a court to pose no danger to the community and are unlikely to recidivate back into supervision;
- Promotes the use of restorative justice practices to support victims of juvenile delinquency;
- Adds counties, municipalities and the Department of Juvenile Justice (DJJ) to the specified entities that are encouraged to create pre-arrest or post-arrest diversion programs for youth nine years of age or younger and youth who are first time misdemeanants;
- Allows a youth taken into custody for a misdemeanor domestic violence charge, if he or she has a violent family history or has been abused, to be placed in a Child in need of services/Family in need of services (CINS/FINS) shelter (unless the youth is subject to secure detention because of his or her prior criminal history);
- Requires a juvenile probation officer during intake to recommend referring this type of youth to an appropriate CINS/FINS shelter;
- Prohibits a youth 9 years of age or younger from being placed into secure detention unless the youth has been charged with a capital felony, a life felony, or a felony of the first degree;

- Requires the risk assessment instrument, that should be effective at predicting risk and avoiding the unnecessary use of secure detention, to be developed by the DJJ in consultation with representatives appointed by specified associations;
- Allows for the commitment of a youth who is pregnant, or a mother with an infant, to a mother-infant program;
- Clarifies that youth participating in a work program or in community service under s. 985.45, F.S., are employees of the state for purposes of workers compensation; and
- Consolidates three currently required annual reports into one comprehensive annual report which is due to the Governor and Legislature by January 15 of each year.

This bill substantially amends the following sections of the Florida Statutes: 394.492, 985.02, 985.125, 985.145, 985.24, 985.245, 985.255, 985.441, 985.45, and 985.632.

II. Present Situation:

The mission of DJJ is to increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen families and turn around the lives of troubled youth.[1] In Fiscal Year 2009-10, 75,166 youth were referred to the DJJ for delinquency offenses. Referrals are the juvenile equivalent of arrests and are the first step in the delinquency process.[2]

The Department of Children and Families (DCF) and DJJ are working together to improve outcomes for children and youth served by both agencies. One area of focus has become the need to divert young children from the juvenile justice system, while identifying and addressing contributing factors to their delinquency.[3] An analysis by DJJ shows that DCF had contact with approximately 30 percent of the youth age nine and younger who were referred to DJJ for a delinquent act.[4] In Fiscal Year 2009-10, there were 391 youth, ages nine and younger, that were referred to DJJ.[5]

Emotional Disturbance Risk Factors
Section 394.492(4), F.S., defines a "child or adolescent at risk of emotional disturbance" as a person under 18 years of age who has an increased likelihood of becoming emotionally disturbed because of certain specified risk factors. Currently, DCF uses this definition to determine which youth to serve through the Comprehensive Child and Adolescent Mental Health Services Act.

Legislative Intent
Section 985.02, F.S., sets forth the Legislature's intent for the juvenile justice system. Subsection (3) of the statute provides that it is the policy of the state with respect to juvenile justice and

[1] Department of Juvenile Justice website, available at: http://www.djj.state.fl.us/AboutDJJ/index.html (last visited March 15, 2011).
[2] Florida Government Accountability Report, Department of Juvenile Justice, available at: http://www.oppaga.state.fl.us/profiles/1073/ (last visited March 15, 2011).
[3] Department of Children and Families, 2009 Staff Analysis and Economic Impact, SB 2128, on file with the Children, Families, and Elder Affairs Committee.
[4] Department of Juvenile Justice, 2010 Legislative Session Bill Analysis SB 1072, on file with the Senate Criminal Justice Committee.
[5] Department of Juvenile Justice, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Criminal Justice Committee.

delinquency prevention to first protect the public from acts of delinquency. In addition, it is the policy of the state to:

> Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization and deep-end commitment.[6]

Subsection (4) of the statute, relating to juvenile detention, specifies that the Legislature finds that secure detention is appropriate to provide punishment that discourages further delinquent behavior.

Subsection (5) of the statute, relating to serious or habitual juvenile offenders, provides the following:

> The Legislature finds that fighting crime effectively requires a multipronged effort focusing on particular classes of delinquent children and the development of particular programs. This state's juvenile justice system has an inadequate number of beds for serious or habitual juvenile offenders and an inadequate number of community and residential programs for a significant number of children whose delinquent behavior is due to or connected with illicit substance abuse. In addition, a significant number of children have been adjudicated in adult criminal court and placed in this state's prisons where programs are inadequate to meet their rehabilitative needs and where space is needed for adult offenders. Recidivism rates for each of these classes of offenders exceed those tolerated by the Legislature and by the citizens of this state.[7]

Diversion

Diversion uses programs that are alternatives to the formal juvenile justice system for youth who have been charged with a minor crime. These individuals share certain high-risk factors, including a first offense at age 15 or younger, poor school performance and truancy, lack of parental supervision, substance abuse problems, or gang affiliation. Diversion programs include Community Arbitration, Juvenile Alternative Services Program (JASP), Teen Court, Civil Citation, Boy and Girl Scouts, Boys and Girls Clubs, mentoring programs, and alternative schools. These programs employ a variety of non-judicial sanctions, including:[8]

- Restitution (payment) to the victim(s);
- Community service hours;
- Letter of apology to the victim(s);
- Curfew;
- Forfeiture of driver's license;
- Encouragement to avoid contact with co-defendants, friends, or acquaintances who are deemed to be inappropriate associations;

[6] Section 985.02(3), F.S.
[7] Section 985.02(5), F.S.
[8] Department of Juvenile Justice, Probation and Community Intervention website, available at: http://www.djj.state.fl.us/Probation/index.html (last visited March 15, 2011).

- Referrals to local social service agencies; and
- Substance abuse or mental health counseling.

Section 985.125, F.S., allows a law enforcement agency or a school district, in cooperation with the state attorney, to create a prearrest or postarrest diversion program.

Intake
Section 985.14, F.S., requires the DJJ to develop an intake system whereby a child brought into intake is assigned a juvenile probation officer. The purpose of the intake process is to assess the child's needs and risks and to determine the most appropriate treatment plan and setting for the child's programmatic needs and risks. The intake process is performed by DJJ through a case management system, and a child's assigned juvenile probation officer serves as the primary case manager.[9]

Currently, s. 985.145(1)(d), F.S., requires a child's juvenile probation officer to ensure that a risk assessment instrument which establishes the child's eligibility for detention has been completed and that the appropriate recommendation was made to the court.

Detention – Initial Assessment
Section 985.24, F.S., provides criteria used in determining if a child alleged to have committed a delinquent act qualifies for detention. Subsection (2) of the statute specifies that a child alleged to have committed a delinquent act may not be placed in detention for any of the following reasons:

- To allow a parent to avoid his or her legal responsibilities;
- To permit more convenient administrative access to the child;
- To facilitate further interrogation or investigation; or
- Due to a lack of appropriate facilities.[10]

Detention Risk Assessment Instrument
Section 985.245, F.S., requires a detention risk assessment instrument (RAI) to be developed by DJJ in agreement with representatives of various associations, including the state attorneys, public defenders, sheriffs, police chiefs, and circuit judges. All determinations and court orders regarding detention placements must be based on a risk assessment of the youth, except in the case of a youth charged with domestic violence. According to DJJ, the current (RAI) has been used since 1992, and it is in the process of being validated.[11]

Continued Detention
A youth charged with domestic violence (misdemeanor or felony) may be held in secure detention (regardless of whether he or she meets detention criteria) if the court makes specific written findings that respite care is not available and it is necessary to place the youth in secure

[9] *See* ss. 985.14 and 985.145, F.S.
[10] Section 985.24(2), F.S.
[11] Department of Juvenile Justice, 2009 Legislative Session Bill Analysis SB 2128, on file with the committee.

detention to protect the victim from injury.[12] Such youth is not eligible to be placed in a CINS/FINS shelter.[13]

Mother/Infant Commitment Program
Section 985.441, F.S., governs the operation of juvenile commitment facilities. Currently, the DJJ operates a 20-bed mother/infant program in Miami-Dade County; however, there is no statutory provision for programs designed for pregnant girls or mothers with infants.

Women in Need of Greater Strength (WINGS) for Life was established in 2001 as a residential commitment program for females in an educational environment. On July 1, 2006, WINGS became a residential commitment treatment program for 20 pregnant or postpartum females and their babies. The mission of the WINGS for Life program is to be committed to celebrating diversity and womanhood by working to enhance the quality of life for the young woman and her child.[14]

The objectives of the program are to provide a structured and supervised transition from residential placement to the community and to closely monitor the youth to ensure public safety. The goal is to return these youth back into the mainstream of their communities with the skills to lead productive lives and successfully parent their children. The WINGS for Life program currently has the capacity to serve 20 women ages 14 – 19.[15]

Program Review and Reporting Requirements
The DJJ is required to submit to the Governor and Legislature various reports relating to program accountability, cost effectiveness, and performance measures, including the following: the Program Accountability Measures Report, a cost-effectiveness report for residential commitment programs; the Outcome Evaluation Report, a report on program outputs and outcomes; and the Quality Assurance Report, a report evaluating the internal processes in programs to determine the level of performance and the quality of services.[16] The DJJ also publishes annually the Comprehensive Accountability Report (CAR).[17]

III. Effect of Proposed Changes:

Section 1
Amends the definition of "Child or adolescent at risk of emotional disturbance" in s. 394.492, F.S., to include the additional risk factor of being nine years of age or younger at the time of referral for a delinquent act. According to DJJ, this change will allow those youth who qualify to receive treatment services through DCF's community based care network.[18]

[12] Section 985.255(2), F.S.
[13] Section 984.14, F.S.
[14] Department of Juvenile Justice, WINGS website, available at http://www.djj.state.fl.us/Residential/Facilities/south_facilities/WINGS_FOR_LIFE.html (last visited March 15, 2011).
[15] *Id.*
[16] Section 985.632, F.S.
[17] Department of Juvenile Justice, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Criminal Justice Committee.
[18] *Id.*

Section 2
The bill amends s. 985.02, F.S., relating to legislative intent language as follows. It amends subsection (3) to specify that it is the policy of the state to:

> Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization, deep-end commitment, and secure detention.

It replaces the language in subsection (4) specifying that secure detention "is appropriate to provide punishment that discourages further delinquent behavior" with language specifying that secure detention "is appropriate to ensure public safety and guarantee court appearance.

It deletes the legislative intent language in subsection (5) relating to serious or habitual juvenile offenders.

It also creates two new subsections. Subsection (8) provides a finding that very young children need age-appropriate services to prevent future delinquent acts. It specifically encourages the diversion of youth nine years of age or younger who are found by the court to pose no danger to the community and are unlikely to recidivate. It also requires DJJ to cooperate with DCF in providing the most appropriate mental health and substance abuse services to these youth.

The new subsection (9) creates legislative intent language on restorative justice, emphasizing the importance of focusing on repairing the damage done to the victim by the delinquent youth, making the youth realize the harm he or she caused, and restoring the victim's loss.

Section 3
Adds counties, municipalities, and DJJ as qualified entities that may establish prearrest and postarrest diversion programs by amending s. 985.125, F.S. It also encourages the use of prearrest and postarrest diversion programs for first-time misdemeanants and youth who are nine years of age or younger.

Section 4
Amends s. 985.145, F.S., juvenile probation officer responsibilities, to require a juvenile probation officer during intake to recommend referring a youth taken into custody for a misdemeanor domestic violence charge, if he or she has a violent family history or has been abused, to an appropriate CINS/FINS shelter rather than secure detention (unless the youth is subject to secure detention based upon his or her prior criminal history).

Section 5
Amends s. 985.24, F.S., detention prohibitions, by prohibiting a youth 9 years of age or younger from being placed into secure detention unless the youth has been charged with a capital felony, a life felony, or a felony of the first degree. Furthermore, it prohibits a youth who is charged with misdemeanor domestic violence who also has a violent family history or who is a victim of abuse or neglect from being placed in secure detention, if the decision for such placement is mitigated by the youth's history of trauma. This prohibition does not apply if the youth is subject to secure detention because of his or her prior criminal history.

Section 6
Amends s. 985.245, F.S., the detention risk assessment instrument (RAI), to require that the RAI be developed by DJJ *in consultation with* representatives appointed by the statutorily enumerated associations. The requirement that the parties involved evaluate and revise the RAI is removed and replaced with language requiring the RAI to be effective at predicting risk and avoiding the unnecessary use of secure detention. The bill also requires the RAI to accurately predict a child's risk of rearrest or failure to appear. It also removes "theft of a motor vehicle or possession of a stolen motor vehicle" as a factor that the RAI can consider.

Section 7
Amends s. 985.255, F. S., detention criteria, to specify that a youth charged with "felony" domestic violence, rather than "domestic violence," will be placed in secure detention. This change effectively eliminates youth charged with misdemeanor domestic violence from being placed in secure detention (except in those cases where there is no family violence or abuse history or the youth's own criminal history record warrants such secure detention placement).

Section 8
Authorizes the court to commit a juvenile mother or expectant juvenile mother to the DJJ for placement in a mother-infant program, by amending s. 985.441, F.S. The mother-infant program must be licensed as a childcare facility under s. 402.308, F.S., and the DJJ must adopt rules to govern such programs.

Section 9
Clarifies that youth participating in a work program or community service under s. 985.45, F.S., are employees of the state for workers compensation purposes. This is accomplished by deleting "liability" and replacing it with "chapter 440."

Section 10
Amends s. 985.632, F.S., relating to program review, quality assurance, cost-effectiveness, and reporting requirements. The bill consolidates three currently required annual reports into one comprehensive annual report, the Comprehensive Accountability Report (CAR), which will be due to the Governor and Legislature by January 15 of each year. The CAR will include the following information:

- Program Accountability Measures (PAM) – a cost-effectiveness report for residential commitment programs.
- Outcome Evaluation (OE) – a report on program outputs and outcomes.
- Quality Assurance (QA) – a report evaluating the internal processes in programs to determine the level of performance and the quality of the services being provided.

Section 11
Provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DJJ reports that this bill will not have a fiscal impact.[19]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

[19] *Id.*

217026

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Eligibility criteria for government-funded pretrial release.—

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

217026

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

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

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

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

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

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

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

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

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

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

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

And the title is amended as follows:

Delete everything before the enacting clause

217026

and insert:

A bill to be entitled

An act relating to pretrial programs; providing state policy and legislative intent; requiring each pretrial release program established by ordinance of a county commission, by administrative order of a court, or by any other means in order to assist in the release of a defendant from pretrial custody to conform to the eligibility criteria set forth in the act; preempting any conflicting local ordinances, orders, or practices; requiring that the defendant satisfy certain eligibility criteria in order to be assigned to a pretrial release program; providing that the act does not prohibit a court from releasing a defendant on the defendant's own recognizance or imposing any other reasonable condition of release on the defendant; authorizing a county to reimburse a licensed surety agent for the premium costs of a bail bond for the pretrial release of an indigent defendant under certain circumstances; providing an effective date.

650300

LEGISLATIVE ACTION

Senate . House

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

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

Between lines 65 and 66
insert:

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

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

650300

And the title is amended as follows:

Delete line 90

and insert:

under certain circumstances; providing that the income eligibility limitations applicable to government-funded pretrial release programs apply only to certain specified counties; providing an effective

330632

LEGISLATIVE ACTION

Senate . House

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

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

Between lines 65 and 66

insert:

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

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

And the title is amended as follows:

Delete line 90

and insert:

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

879544

LEGISLATIVE ACTION

Senate . House

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

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

Between lines 65 and 66
insert:

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

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

879544

And the title is amended as follows:

Delete line 90

and insert:

under certain circumstances; providing that the act does not prohibit a law enforcement officer or a code enforcement officer from issuing a notice to appear in lieu of jail; providing an effective

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 372
INTRODUCER:	Senator Bogdanoff
SUBJECT:	Pretrial Programs
DATE:	March 15, 2011
REVISED:	

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

I. Summary:

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

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

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

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

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

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

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

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

The bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

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

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

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

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

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

[1] Art. I, section 14, Constitution of Florida.
[2] Section 907.041(4), F.S., defines the term "dangerous crime" to include arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking or aggravated stalking; act of domestic violence; home invasion robbery; act of terrorism; manufacturing any substances in violation of ch. 893; and attempting or conspiring to commit any of the aforementioned crimes.

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

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

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

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

Pretrial Release Programs in Florida

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

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

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

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

[5] s. 907.041(3)(b), F.S.

[6] OPPAGA Report 10-66, December 2010.

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

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

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

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

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

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

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[7] *Id. Appendix B.*

[8] Section 907.043(4)(b), F.S. requires the following:
1. The name, location, and funding sources of the pretrial release program, including the amount of public funds, if any, received by the pretrial release program. 2. The operating and capital budget of each pretrial release program receiving public funds. 3. The percentage of the pretrial release program's total budget representing receipt of public funds; the percentage of the total budget which is allocated to assisting defendants obtain release through a nonpublicly funded program; the amount of fees paid by defendants to the pretrial release program. 4. The number of persons employed by the pretrial release program. 5. The number of defendants assessed and interviewed for pretrial release. 6. The number of defendants recommended for pretrial release. 7. The number of defendants for whom the pretrial release program recommended against nonsecured release. 8. The number of defendants granted nonsecured release after the pretrial release program recommended nonsecured release. 9. The number of defendants assessed and interviewed for pretrial release who were declared indigent by the court. 10. The name and case number of each person granted nonsecured release who: failed to attend a scheduled court appearance; was issued a warrant for failing to appear; was arrested for any offense while on release through the pretrial release program; and any additional information deemed necessary by the governing body to assess the performance and cost efficiency of the pretrial release program.

[9] *Pretrial Release Programs' Data Collection Methods and Requirements Could Improve;* OPPAGA Report issued December 2010, page 3.

[10] *Id.* page 4. See also Appendix A.

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

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

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

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

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

Determination of Indigency

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

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

[11] s. 907.043(4)(b)6., F.S.
[12] OPPAGA Report 10-66, page 4.
[13] *Id.* page 4-6 See also Appendix D.
[14] s. 27.52(1), F.S.

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

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

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

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

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

> "Indigent" shall mean a person who is unable to pay for the services of an attorney, including costs of investigation, without substantial hardship to the person or the person's family; "partially indigent" shall mean a person unable to pay more than a portion of the fee charged by an attorney, including costs of investigation, without substantial hardship to the person or the person's family.
>
> Before appointing a public defender, the court shall: (A) inform the accused that, if the public defender or other counsel is appointed, a lien for the services rendered by counsel may be imposed as provided by law; (B) make inquiry into the financial status of the accused in a manner not inconsistent with the guidelines established by section 27.52, Florida Statutes. The accused shall respond to the inquiry under oath; (C) require the

[15] s. 27.52(1)(a), F.S.
[16] s. 27.52(2)(a), F.S.
[17] s. 27.52(2)(d), F.S.
[18] s. 27.52(3), F.S.

accused to execute an affidavit of insolvency as required by section 27.52, Florida Statutes.[19]

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

III. Effect of Proposed Changes:

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

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

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

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

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

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

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

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[19] Rule 3.111(b)(4)-(5), Fl.R.Crim.P.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

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

Vendors Who Provide Supervision Services to Pretrial Release Participants Will Lose Revenue
Six of the 28 pretrial release programs contract with vendors for GPS and electronic monitoring, drug and alcohol testing, kiosk reporting, and other services rendered to defendants.[20] These services are fully or partially supported by program participant fees. If this bill passes and the eligibility criteria for the pretrial release program is narrowed to only indigents, these contractual services will likely decline because the sheer number of participants will be less and because indigent defendants will be less likely to afford these types of supervision and support services.

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

[20] Program Survey Responses from 2010 OPPAGA Annual Report. Counties include: Alachua, Broward, Charlotte, Escambia, Orange, and Osceola.

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

C. Government Sector Impact:

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

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

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

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

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

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

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

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

D. Other Constitutional Issues:

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

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

> (3)(b) No person shall be released on nonmonetary conditions under the supervision of a pretrial release service, unless the service certifies to the court that it has investigated or otherwise verified:
> 1. The circumstances of the accused's family, employment, financial resources, character, mental condition, and length of residence in the community;
> 2. The accused's record of convictions, of appearances at court proceedings, of flight to avoid prosecution, or of failure to appear at court proceedings; and
> 3. Other facts necessary to assist the court in its determination of the indigency of the accused and whether she or he should be released under the supervision of the service. …
>
> (4)(b) No person charged with a dangerous crime shall be granted nonmonetary pretrial release at a first appearance hearing; however, the court shall retain the discretion to release an accused on electronic monitoring or on recognizance bond if the findings on the record of facts and circumstances warrant such a release.

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

[22] OPPAGA Report, Pretrial Release Programs, Pasco County's Jail Population
[23] OPPAGA Program Survey Responses from 2010 Annual Report. Twelve counties include: Alachua, Broward, Charlotte, Citrus, Escambia, Leon, Okaloosa, Orange, Osceola, Palm Beach , Santa Rosa, and St. Lucie.

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

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

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

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

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

VI. Technical Deficiencies:

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

[24] *State v. Raymond*, 906 So.2d 1045 (Fla. 2005).
[25] *Id.* at 1051.
[26] *In re Florida Rules of Criminal Procedure 3.131 and 3.132*, 948 So.2d 731, 733 (Fla. 2007).
[27] *Id.* and Florida Rule of Criminal Procedure 3.131(b)(4).

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.