The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Dean, Vice Chair

MEETING DATE: Tuesday, April 12, 2011
TIME: 1:00 —6:00 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	**CS/SB 226** Children, Families, and Elder Affairs / Smith (Similar H 1143)	Human Services; Allows the national accreditation of human service providers to substitute for certain agency licensure and monitoring requirements. Requires a single lead agency to be responsible for monitoring human services delivery for designated populations. Requires agencies to provide an analysis of every new governmental mandate to an affected contractor before the mandate may be required or imposed, etc. CF 03/22/2011 Fav/CS CJ 04/04/2011 Temporarily Postponed CJ 04/12/2011 GO BC	
2	**CS/SB 328** Judiciary / Margolis (Identical CS/H 59)	Service of Process; Authorizes a sheriff to charge a fee for processing a writ of execution. Grants authorized process servers unannounced access to specified residential areas where a defendant or witness resides or is known to be. Authorizes a person attempting to serve process on the registered agent of a corporation to serve the process, in specified circumstances, on any employee of the registered agent during the first attempt at service even if the registered agent is temporarily absent from his or her office, etc. JU 03/22/2011 Fav/CS RI 04/05/2011 Favorable CJ 04/12/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 404** Wise (Similar CS/H 739, Identical H 151)	Transition-to-adulthood Services; Provides legislative intent concerning transition-to-adulthood services for youth in the custody of the Department of Juvenile Justice (DJJ). Provides for eligibility for services for youth served by the DJJ who are legally in the custody of the Department of Children and Family Services (DCFS). Provides that an adjudication of delinquency does not disqualify a youth in foster care from certain services from the DCFS. Provides powers and duties of the DJJ for transition services. Provides for assessments, etc. CF 03/28/2011 Favorable CJ 04/12/2011 BC	
4	**SB 748** Ring (Compare H 895)	Youth Athletic Coaches; Requires certain sanctioning bodies to disqualify a person from acting as a coach for the remainder of the season if that person is removed from a game by an official. Providing for an appeal. CJ 04/12/2011 CA JU	
5	**CS/SB 786** Judiciary / Diaz de la Portilla (Similar H 1089)	Landlord and Tenant; Provides that provisions governing residential tenancies do not apply to a person not legally entitled to occupy the premises. JU 03/22/2011 Fav/CS CJ 04/04/2011 Temporarily Postponed CJ 04/12/2011 RC	
6	**CS/SB 792** Transportation / Diaz de la Portilla (Similar H 181, Compare H 295, S 824)	Driving Without a Valid Driver's License; Provides an additional fine for a violation of specified provisions relating to driving with a canceled, suspended, or revoked driver's license or driving privilege. Provides increased fine amounts for second or subsequent violations. Provides for distribution of such fines collected. Revises penalties for knowingly driving while the driver's license or driving privilege is canceled, suspended, or revoked, etc. TR 03/16/2011 Temporarily Postponed TR 03/22/2011 Fav/CS CJ 04/12/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 812** Regulated Industries / Diaz de la Portilla (Similar H 77)	Internet Poker; Creates the "Internet Poker Consumer Protection and Revenue Generation Act." Provides for intrastate Internet poker to be provided to the public by cardroom operators through a state Internet poker network operated by licensed Internet poker hub operators. Provides for selection of Internet poker hub operators through competitive procurement process. Provides for distribution of moneys received from Internet poker hub operations, etc. RI 03/16/2011 Fav/CS CJ 04/12/2011 BC	
8	**CS/SB 890** Community Affairs / Dean (Compare H 783)	Public Safety Telecommunicators; Provides for sworn state-certified law enforcement officers to serve as temporary 911 public safety telecommunicators. Provides training requirements. CA 03/07/2011 Temporarily Postponed CA 03/28/2011 Fav/CS CJ 04/12/2011 BC	
9	**SB 956** Hays (Compare CS/CS/H 517, CS/H 4069, CS/S 234)	Firearms Transactions; Provides that certain laws of this state regulating firearms transactions do not apply to transactions by a resident of this state which take place in another state. Provides for the applicable law. Requires a specified background check for such transactions. Repeals provision relating to the purchase of rifles and shotguns in contiguous states by a Florida resident. CJ 04/12/2011 JU BC	
10	**CS/SB 1088** Children, Families, and Elder Affairs / Altman (Compare H 705)	Criminal Conduct; Defines the term "mental injury" with respect to the offenses of abuse, aggravated abuse, and neglect of a child. Requires that a person acting as an expert witness have certain credentials. Conforms cross-references. Redefines the term "crime" for purposes of crime victims compensation to include additional forms of injury. Redefines the term "victim" to conform with the modified definition of the term "crime." CF 03/22/2011 Fav/CS CJ 04/12/2011 JU BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**SB 1156** Garcia (Similar CS/H 487)	Dextromethorphan; Cites this act as the "Andy Maxfield Dextromethorphan Act." Amends and reenacts provisions relating to penalties. Prohibits obtaining or delivering to an individual in a retail sale any nonprescription compound, mixture, or preparation containing dextromethorphan or related compounds in excess of specified amounts. Regulates retail display of products containing dextromethorphan or related compounds. Requires the training of retail employees. Provides limited civil immunity for the release of information to law enforcement officers, etc. HR 03/28/2011 Favorable CJ 04/12/2011 JU	
12	**SB 1402** Smith (Similar H 727)	Expunging Criminal History Records; Provides for the automatic expunction of criminal history records in specified circumstances. Provides procedures to expunge a criminal history record. Provides for the effect of expunction. Provides that expunction granted under this section does not prevent a person who receives such relief from petitioning for the expunction or sealing of a criminal history record under other provisions of law. Provides for treatment of certain statutory cross-references. Conforms provisions to changes made by the act. CJ 04/12/2011 JU BC	
13	**CS/SB 1504** Rules / Simmons (Compare CS/H 1261, CS/S 2086)	Initiative Petitions; Limits the validity of a signed initiative petition to 30 months. Specifies qualifications for a person to act as a paid petition circulator. Subjects a petition circulator or an initiative sponsor to criminal penalties for violating specified restrictions or requirements. Specifies a deadline to commence a legal challenge to an amendment proposed by the Legislature to the State Constitution, etc. EE 03/21/2011 Favorable RC 03/29/2011 Fav/CS CJ 04/12/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**SB 1508** Wise (Compare CS/H 1279)	Costs of Prosecution; Requires the clerk of the court to distribute the funds received from a defendant according to a specified order of priority when the defendant makes a partial payment to the clerk of costs of prosecution. Requires that a portion of the costs of prosecution be remitted to the State Attorneys Revenue Trust Fund. Imposes certain costs on persons whose cases are disposed of under a pretrial intervention program or pretrial substance abuse intervention program, etc. CJ 04/12/2011 JU BC	
15	**SB 1646** Latvala (Similar CS/H 365)	Concealed Weapons or Firearms Licenses; Provides an exemption from certain restrictions for licensees holding specified county offices. CJ 04/12/2011 CM CA	
16	**SB 1790** Storms	Driving Under the Influence; Prohibits a state or local law enforcement agency from operating a "no refusal" DUI checkpoint. TR 03/22/2011 Favorable CJ 04/04/2011 Temporarily Postponed CJ 04/12/2011 JU	
17	**SB 1808** Diaz de la Portilla (Similar H 1449)	Assault or Battery ; Increases the mandatory minimum term of imprisonment for battery of a law enforcement officer or firefighter while possessing a firearm or destructive device. Increases the mandatory minimum term of imprisonment for such a battery while possessing a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun. CJ 04/04/2011 Temporarily Postponed CJ 04/12/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	**SB 1890** Storms (Compare CS/H 1277)	Sexual Predator Identifiers; Requires that a sexual predator supply the Internet identifier used by the sexual predator rather than the instant message name upon registration as a sexual predator. Prohibits a minor from intentionally or knowingly using an electronic communication device to transmit, distribute, or display a visual depiction of himself or herself which depicts nudity or for the minor to intentionally or knowingly possess a visual depiction of another minor that depicts nudity and is harmful to minors. Provides an exception. Provides criminal penalties, etc. CJ 04/04/2011 Temporarily Postponed CJ 04/12/2011 JU BC	

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	CS/SB 226
INTRODUCER:	Committee on Children, Families, and Elder Affairs and Senators Smith and Gaetz
SUBJECT:	Human Services Contracting
DATE:	March 30, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	**Fav/CS**
2.	Clodfelter	Cannon	CJ	**Pre-Meeting**
3.			GO	
4.			BC	
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:

The bill creates s. 287.0576, F.S., relating to outsourced human services, and provides definitions. The bill requires that private accreditation standards be accepted in lieu of agency licensure requirements and requires a single agency to take the lead in developing policies and monitoring requirements for specified human services. The bill specifies duties for each lead agency, addresses material changes to contracts and corresponding contract amendments, provides that unexpended but disbursed funds carry over to the next year as cash flow, and requires agencies to accept and maintain electronic versions of mandated reports.

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

This bill creates section 287.0576, Florida Statutes.

II. Present Situation:

Contracting and Outsourcing

Background

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

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

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

Agency for Health Care Administration (AHCA)

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

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[1] Bandoh, E. *Outsourcing the Delivery of Human Services*, Welfare Information Network, Issue Notes. Vol. 7, No. 12 October 2003. Available at: http://76.12.61.196/publications/outsourcinghumanservicesIN.htm (Last visited March 16, 2011.)
[2] *Id*.
[3] Section 287.05721(2), F.S.
[4] Agency for Health Care Administration. 2011 Bill Analysis and Economic Impact Statement, SB 226.

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

Department of Children and Family Services (DCF)

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

Agency for Persons with Disabilities (APD)

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

Department of Health (DOH)

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

Payment Issues

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

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[5] *Id*.

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

[7] Department of Children and Family Services. Staff Analysis and Economic Impact, SB 226, December 20, 2010.

[8] Prior to October, 2004, APD was the Developmental Disabilities Program Office within the Department of Children and Families.

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

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

[11] Department of Health. 2011 Bill Analysis, Economic Statement and Fiscal Note, SB 226, January 7, 2011.

dispute, the invoice recorded in the financial systems of the state shall contain a statement of the dispute and authorize payment only in the amount not disputed.[12]

Document Vaults

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

Background Screening

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

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

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

III. Effect of Proposed Changes:

Definitions

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

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

[12] s. 215.422, F.S.
[13] Department of Children and Family Services. Staff Analysis and Economic Impact, SB 226, December 20, 2010.
[14] Chapter 2010-114, L.O.F.
[15] Agency for Persons with Disabilities. 2011 Bill Analysis, SB 226, February 11, 2011.
[16] Florida Department of Law Enforcement. 2011 Bill Analysis, SB 226, March 30, 2011.

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

Outsourced Human Services

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

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

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

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

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

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

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

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

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

The bill also provides:

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

Background Screening

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

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

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

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

[17] *Chiles v. Children* A, B, C, D, E & F, 589 So.2d 260, 264 (Fla.1991).
[18] *Fla. Dep't of State, Div. of Elections v. Martin*, 916 So.2d 769, 770 (Fla. 2005), citing *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55-56 (Fla.1976).
[19] *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 363 (Fla. 1st DCA 1985).

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

C. Government Sector Impact:

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

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

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

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

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

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

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

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

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

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

[20] s. 287.0575, F.S.

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

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

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

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

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

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

[21] Department of Children and Family Services, Staff Analysis and Economic Impact, SB 226. December 10, 2010.
[22] Florida Department of Law Enforcement. 2011 Bill Analysis, SB 226, March 30, 2011.

VIII. Additional Information:

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

CS by Children, Families, and Elder Affairs on March 22, 2011:
Removes the provision in the bill that required the Social Services Estimating Conference to develop information related to mental health, substance abuse, child welfare, and juvenile justice services.

B. Amendments:

None.

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 328
INTRODUCER:	Judiciary Committee and Senator Margolis
SUBJECT:	Service of Process
DATE:	April 6, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Maclure	JU	**Fav/CS**
2.	Harrington	Imhof	RI	**Favorable**
3.	Cellon	Cannon	CJ	**Pre-Meeting**
4.			BC	
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:

The bill authorizes sheriffs to charge a $40 fee for processing a writ of execution (current law authorizes sheriffs to charge a $40 fee for docketing and indexing a writ of execution) to reflect the modernization of the current practice for processing of the writs of execution. The bill allows the party requesting service to furnish the sheriff with an electronic copy of process, which must be signed and certified by the clerk of court.

Currently, each process server must document on the copy served the date and time of service and the process server's identification number and initials. The bill specifies that the process server must place this information *on the front page* of the copy served. In addition, the person serving process must list on the return-of-service form all initial pleadings delivered and served along with the process. The return-of-service form must be filed with the court.

The bill provides that a gated residential community, including a condominium association or a cooperative, must grant unannounced entry into the community, including its common areas and common elements, to a person who is attempting to serve process on a defendant or witness who resides within or is known to be within the community.

The bill revises procedures for serving a corporation's registered agent under the alternative method in s. 48.081(3)(a), F.S. In addition, the bill imposes additional requirements on the return of execution of process to include a server's signature on the return.

This bill substantially amends the following sections of the Florida Statutes: 30.231, 48.031, 48.081, 48.21, and 48.29.

II. Present Situation:

Service of Process

Under Florida Rule of Civil Procedure 1.070(b), any person who is authorized by law to complete service of process may do so in accordance with applicable Florida law for the execution of legal process. Chapter 48, F.S., identifies three classes that may serve process in civil cases. Process may be served by the sheriff in the county where the defendant is located.[1] The sheriff may appoint special process servers who meet specified statutory minimum requirements.[2] The chief judge of the circuit court may establish an approved list of certified process servers.[3] Additionally, each trial judge has the authority to appoint a special process server in any particular case.

Authorized process servers serve the complaint or petition to defendants in a civil case so that the court may acquire personal jurisdiction over the person who receives service. Strict compliance with the statutory provisions of service of process is required in order for the court to obtain jurisdiction over a party and to assure that a defendant receives notice of the proceedings filed.[4] Each process server must document the service of process by placing the date and time of service and the process server's identification number and initials on the copy served.[5] Because strict compliance with all of the statutory requirements for service is required, the failure to comply with the statutory terms renders that service defective, resulting in a failure to acquire jurisdiction over the defendant.[6]

The law specifies the manner and methods that service of process must be executed by process servers. Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents.[7] The usual place of abode refers to the place where the defending party is actually living at the time of service. Substitute service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two or more attempts to serve the owner have been made at the place of business.[8] The requirements for

[1] Section 48.021, F.S.
[2] *Id.*
[3] Section 48.27, F.S.
[4] *Vidal v. SunTrust Bank*, 41 So. 3d 401, 402-03 (Fla. 4th DCA 2010).
[5] Sections 48.29 and 48.031(5), F.S.
[6] Section 48.031, F.S.; *Vidal*, 41 So. 3d at 402-04 (holding as a case of first impression that the process server's failure to note the time of service of the bank's complaint on the copy of the complaint that was served on the debtor rendered the service of the complaint defective).
[7] Section 48.031, F.S.
[8] *Id.*

service of process of witness subpoenas for both criminal and civil actions mirror those of the parties to the litigation.[9] Each person who effects service of process must note on a return-of-service form attached, the date and time when it comes to hand, the date and time when it is served, the manner of service, the name of the person on whom it was served, and, if served on a representative, the position occupied by the person.[10] A failure to state the foregoing facts invalidates the service, but the return is amendable to state the truth at any time on application to the court from which the process was issued.[11] On amendment, service is as effective as if the return had originally stated the omitted facts.[12] A failure to state all the facts in the return shall subject the person effecting service to a fine no greater than $10, in the court's discretion.[13]

The law specifies the manner and method of process on private corporations.[14] As an alternative to the method and manner of process outlined in s. 48.081, F.S., process may be served on the agent designated by the corporation to receive process under s. 48.091, F.S. If service cannot be made on the registered agent because of failure to comply with s. 48.091, F.S., service of process must be permitted on any employee at the corporation's principal place of business or on any employee of the registered agent.[15]

Under specified circumstances, substitute service may be made. Substitute service may be made on the spouse of the person to be served at any place in the county if the spouse requests the service, the spouses are living together, and the proceeding is not an adversary proceeding between the spouse and person to be served.[16] A person within a court's jurisdiction may not avoid service and has an obligation to accept service of process when reasonable attempts are made to serve that person.[17] The sheriff's or process server's reasonable attempt to personally serve a person at his or her home may not be frustrated by that person's willful refusal to accept the service of process.[18] Whoever resists, obstructs, or opposes any officer or any other person authorized to execute process in the execution of legal process or in the lawful execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, may be liable for violation of a first-degree misdemeanor, which is punishable by jail time up to one year and the imposition of a fine up to $1,000.[19]

The sheriffs of all counties of the state in civil cases must charge fixed, nonrefundable fees for docketing and service of process.[20] The sheriffs must charge $40 for docketing and indexing each writ of execution, regardless of the number of persons involved.[21] It is the responsibility of

[9] *Id.*
[10] Section 48.21, F.S.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Section 48.081, F.S.
[15] *Id.*
[16] *Id.*
[17] *Haney v. Olin Corp*., 245 So. 2d 671 (Fla. 4th DCA 1971) (holding that there need not be communication between the process server and party to be served and that leaving suit papers on a doorstep can become effective delivery when the party to be served avoids service by closing the door in the process servers face).
[18] *Id.*
[19] Section 843.02, F.S.
[20] Section 30.231, F.S.
[21] Section 30.231(1)(d)1., F.S.

the party requesting service of process to furnish to the sheriff the original or a certified copy of process and sufficient copies to be served on the parties receiving the service of process.[22]

Service of process is required, and when a plaintiff in a civil action has not properly served a defendant within 120 days after filing the initial pleading, the action may be dismissed without prejudice.[23] In lieu of the dismissal of the action, if the plaintiff shows good cause or excusable neglect for the failure, the court may extend the time for service for an appropriate period.[24] The trial court has great discretion to extend the time even when good cause has not been shown for failure to serve the defendant within the required period.[25]

Service of Process in Gated Residential Communities

The growth in the number of gated residential communities (communities composed of multifamily residences and single-family residences that have entrances locked or otherwise restrict physical access to their dwellings) have presented a challenge to litigants' efforts to provide service of process to party defendants living in these residences.[26] In *Luckey v. Thompson*, the plaintiff sought to vacate a default judgment entered against him in a prior case because the trial court found that he had concealed himself to avoid service.[27] The appellate court refused to vacate the judgment and upheld the trial judge findings supported by evidence that showed that genuine attempts by various methods were made to effect service on the plaintiff who had "secreted himself from the world and lived in isolation in a high security apartment refusing to answer the telephone or even to open the mail."[28] In *Boatfloat*, the court noted the challenge of successfully serving a limited liability company when the company's registered agents only address is a gated residential community and the company does not have regular business hours open to the public.[29]

The Third District Court of Appeal recently held that the plaintiff had demonstrated due diligence to personally serve the party defendant, and, based upon the record, it upheld the plaintiff's substitute service of the party defendant.[30] The court found that the plaintiff attempted to serve the party defendant "twenty-two times over a three-month period at his admittedly correct Florida address" but due to the fact that the defendant's residence is gated, the process server was barred from access to the front door.[31] The court held that "'litigants have the right to choose their abodes; they do not have the right to control who may sue or serve them by denying them physical access.'"[32]

California law specifically addresses service of process in gated communities and grants a registered process server or a representative of a county sheriff's or marshal's office access into a

[22] Section 30.231(3), F.S.
[23] Fla. R. Civ. P. 1.070.
[24] *Id.*
[25] *Chaffin v. Jacobson*, 793 So. 2d 102 (Fla. 2d DCA 2001).
[26] *See, Luckey v. Thompson*, 343 So. 2d 53 (Fla. 3d DCA 1977), and *Boatfloat LLC v. Golia*, 915 So. 2d 288 (Fla. 4th DCA 2005).
[27] *Luckey*, 343 So. 2d at 54.
[28] *Id.*
[29] *Boatfloat*, 915 So. 2d at 289-90.
[30] *Delancy v. Tobias*, 26 So. 3d 77, 79-80 (Fla. 3d DCA 2010).
[31] *Id.*
[32] *Id.* at 80 (quoting *Bein v. Brechtel-Jochim Group, Inc.*, 6 Cal.App.4th 1387, 1393, 8 Cal.Rptr.2d 351 (1992)).

gated community in order to make service of process.[33] The law provides that any person shall be granted access to a gated community for a reasonable period of time for the purpose of performing lawful service of process or service of a subpoena, upon identifying to the guard the person or persons to be served, and upon displaying proper identification, including a driver's license and sheriff's or marshal's identification, or evidence of current registration as a process server.[34] The law applies only to a gated community that is staffed by a guard or other security personnel assigned to control access to the community at the time service is attempted.[35] In enacting the law granting process servers access to gated communities, the California Legislature expressed intent to not abrogate or modify the holding in *Bein v. Brechtel-Jochim Group, Inc.*[36] The court in *Bein* held that substitute service on the guard of a gated community is adequate, if the guard refuses to admit the process server.[37]

Condominiums

Condominiums are regulated under ch. 718, F.S. Condominium property that is not located within the boundaries of individual condominium units and is jointly owned by all condominium unit owners in a condominium is defined as common elements.[38] "Limited common elements" in a condominium are those common elements that are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration of condominium (an instrument by which the condominium is created).[39] Limited common elements are often appurtenant to a condominium unit owner's unit. Examples of limited common elements include assigned parking spaces, patios, balconies, stairways, and storage lockers.

III. Effect of Proposed Changes:

The bill authorizes sheriffs to charge a $40 dollar fee for *processing* a writ of execution, rather than for *docketing and indexing* a writ of execution, and reflects the modernization of the current practice for processing of the writs of execution. The bill allows the party requesting service to furnish the sheriff with an electronic copy of process, which must have been signed and certified by the clerk of court.

The bill provides that a process server must document, on the *front page* of at least one of the copies served, the date and time of service and the process server's identification number and initials. The person serving process must list on the return-of-service form all initial pleadings delivered and served along with the process. The person issuing the process must file the return-of-service form with the court.

The bill provides that a gated residential community, including a condominium association or a cooperative, must grant unannounced entry into the community, including its common areas and common elements, to a person who is attempting to serve process on a defendant or witness who resides within or is known to be within the community.

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[33] CAL. CIV. PROC. CODE s. 415.21.
[34] *Id.*
[35] *Id.*
[36] *Id.* (in historical and statutory notes to the section; see Section 2 of Stats.1994, c. 691 (A.B. 3307)).
[37] *Bein*, 6 Cal.App.4th at 1392-93.
[38] Section 718.103(8), F.S.
[39] Sections 718.103(15) and (19), F.S.

The bill amends the requirements for service of process on a corporation. The bill provides that a person attempting to serve process on the registered agent of a corporation under the alternative method in s. 48.081(3)(a), F.S., may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is temporarily absent from his or her office.

The bill imposes additional requirements on the return of execution of process to address, in part, *Vidal v. SunTrust Bank*.[40] Under the bill, the return-of-service form must be signed by the person who effects the service of process. However, a person employed by a sheriff who effects the service of process may sign the return-of-service form using an electronic signature certified by the sheriff. On amendment of the return-of-service form, service is as effective as if the return had originally stated the omitted facts or *included the signature*. A failure to include the *signature on the return* shall subject the person effecting service to a fine not exceeding $10, in the court's discretion.

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:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill authorizes sheriffs to charge a $40 dollar fee for *processing* a writ of execution (current law authorizes sheriffs to charge a $40 fee for *docketing and indexing* a writ of execution) and reflects the modernization of the current practice for processing of the writs of execution.

B. Private Sector Impact:

None.

[40] See *Vidal*, *supra* notes 4 and 6. In the case, the Fourth District Court of Appeal reiterated the importance of strict compliance with the statutory provisions governing service of process in order to avoid defective service process.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires gated residential property owners to allow a process server into their community without any requirement for identification or knowledge of the legitimacy of the person who alleges that he or she is a process server. Community associations of gated residential communities where physical access to the community is controlled may be faced with additional liability for handling service of process issues for its residents.

VIII. Additional Information:

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

CS by Judiciary on March 22, 2011:
The committee substitute revises the procedures for service of process to:

- Authorize sheriffs to charge a $40 fee for processing a writ of execution (current law authorizes a $40 fee for docketing and indexing a writ of execution);
- Accommodate electronic copies of process;
- Clarify the manner and place that residents of gated residential communities must grant process servers unannounced entry into their community;
- Allow the process server to serve the process on any employee of the registered agent of a corporation during the first attempt at service even if the registered agent is temporarily absent from his or her office; and
- Impose additional requirements on the return of execution of process to include a server's signature on the return.

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 (with title amendment)

Between lines 159 and 160
insert:

Section 4. College-Preparatory Boarding Academy Pilot Program for at-risk students.—

(1) PROGRAM CREATION.—The College-Preparatory Boarding Academy Pilot Program is created for the purpose of providing unique educational opportunities to dependent or at-risk children who are academic underperformers but who have the potential to progress from at-risk to college-bound. The State Board of Education shall implement this program.

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

(a) "Board" means the board of trustees of a college-preparatory boarding academy for at-risk students.

(b) "Eligible student" means a student who is a resident of the state and entitled to attend school in a participating school district, is at risk of academic failure, is currently enrolled in grade 5 or 6, is from a family whose income is below 200 percent of the federal poverty guidelines, and who meets at least two of the following additional risk factors:

1. The student has a record of suspensions, office referrals, or chronic truancy.

2. The student has been referred for academic intervention or has not attained at least a proficient score on the state achievement assessment in English and language arts, reading, or mathematics.

3. The student's parent is a single parent.

4. The student does not live with the student's custodial parent.

5. The student resides in a household that receives a housing voucher or has been determined as eligible for public housing assistance.

6. A member of the student's immediate family has been incarcerated.

7. The student has been declared an adjudicated dependent by a court of competent jurisdiction.

8. The student has received a referral from a school, teacher, counselor, dependency circuit court judge, or community-based care organization.

9. The student meets any additional criteria prescribed by

an agreement between the State Board of Education and the operator of a college-preparatory boarding academy.

(c) "Operator" means a private, nonprofit corporation that is selected by the state under subsection (3) to operate the program.

(d) "Program" means a college-preparatory boarding academy for at-risk students which includes:

1. A remedial curriculum for middle school grades;

2. The college-preparatory curriculum for high school grades;

3. Extracurricular activities, including athletics and cultural events;

4. College admissions counseling;

5. Health and mental health services;

6. Tutoring;

7. Community service and service learning opportunities;

8. A residential student life program;

9. Extended school days and supplemental programs; and

10. Professional services focused on the language arts and reading standards, mathematics standards, science standards, technology standards, and developmental or life skill standards using innovative and best practices for all students.

(e) "Sponsor" means a public school district that acts as sponsor pursuant to s. 1002.33, Florida Statutes.

(3) PROPOSALS.—

(a) The State Board of Education shall select a private, nonprofit corporation to operate the program which must meet all of the following qualifications:

1. The nonprofit corporation has, or will receive as a

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condition of the contract, a public charter school authorized under s. 1002.33, Florida Statutes, to offer grades 6 through 12, or has a partnership with a sponsor to operate a school.

2. The nonprofit corporation has experience operating a school or program similar to the program authorized under this section.

3. The nonprofit corporation has demonstrated success with a school or program similar to the program authorized under this section.

4. The nonprofit corporation has the capacity to finance and secure private funds for the development of a campus for the program.

(b) Within 60 days after July 1, 2011, the State Board of Education shall issue a request for proposals from private, nonprofit corporations interested in operating the program. The state board shall select operators from among the qualified responders within 120 days after the issuance of the requests for proposal.

(c) Each proposal must contain the following information:

1. The proposed location of the college-preparatory boarding academy;

2. A plan for offering grade 6 in the program's initial year of operation and a plan for expanding the grade levels offered by the school in subsequent years; and

3. Any other information about the proposed educational program, facilities, or operations of the school as determined necessary by the state board.

(4) CONTRACT.—The State Board of Education shall contract with the operator of a college-preparatory boarding academy. The

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contract must stipulate that:

(a) The academy may operate only if, and to the extent that, it holds a valid charter authorized under s. 1002.33, Florida Statutes, or is authorized by a local school district defined as a sponsor pursuant to s. 1002.33, Florida Statutes.

(b) The operator shall finance and oversee the acquisition of a facility for the academy.

(c) The operator shall operate the academy in accordance with the terms of the proposal accepted by the state board.

(d) The operator shall comply with this section.

(e) The operator shall comply with any other provisions of law specified in the contract, the charter granted by the local school district or the operating agreement with the sponsor, and the rules adopted by the state board for schools operating in this state.

(f) The operator shall comply with the bylaws that it adopts.

(g) The operator shall comply with standards for admission of students to the academy and standards for dismissal of students from the academy which are included in the contract and may be reevaluated and revised by mutual agreement between the operator and the state board.

(h) The operator shall meet the academic goals and other performance standards established by the contract.

(i) The state board or the operator may terminate the contract in accordance with the procedures specified in the contract, which must at least require that the party seeking termination give prior written notice of the intent to terminate the contract and that the party receiving the termination notice

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be granted an opportunity to redress any grievances cited therein.

(j) If the school closes for any reason, the academy's board of trustees shall execute the closing in a manner specified in the contract.

(5) OPERATOR BYLAWS.—The operator of the program shall adopt bylaws for the oversight and operation of the academy which are in accordance with this section, state law, and the contract between the operator and the State Board of Education. The bylaws must include procedures for the appointment of board members to the academy's board of trustees, which may not exceed 25 members, 5 members of whom shall be appointed by the Governor with the advice and consent of the Senate. The bylaws are subject to approval of the state board.

(6) OUTREACH.—The program operator shall adopt an outreach program with the local education agency or school district and community. The outreach program must give special attention to the recruitment of children in the state's foster care program as a dependent child or as a child in a program to prevent dependency who are academic underperformers who, if given the unique educational opportunity found in the program, have the potential to progress from at-risk children to college-bound children.

(7) FUNDING.—The college-preparatory boarding academy must be a public school and part of the state's program of education. If the program receives state funding from noneducation sources, the State Board of Education shall coordinate, streamline, and simplify any requirements to eliminate duplicate, redundant, or conflicting requirements and oversight by various governmental

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programs or agencies. The applicable regulating entities shall, to the maximum extent possible, use independent reports and financial audits provided by the program and coordinated by the state board to eliminate or reduce contract and administrative reviews. Additional items may be suggested, if reasonable, to the state board to be included in independent reports and financial audits for the purpose of implementing this section. Reporting paperwork that is prepared for the state and local education agency shall also be shared with and accepted by other state and local regulatory entities, to the maximum extent possible.

(8) PROGRAM CAPACITY.—Beginning August 2012, the program shall admit 80 students. In each subsequent fiscal year, the program shall grow by an additional number of students, as specified in the contract, until the program reaches a capacity of 400 students.

(9) STUDENT SERVICES.—Students enrolled in the program who have been adjudicated dependent must remain under the case management services and supervision of the lead agency and its respective providers. The operator may contract with its own providers as necessary to provide services to children in the program and to ensure continuity of the full range of services required by children in foster care who attend the academy.

(10) MEDICAID BILLING.—This section does not prohibit an operator from appropriately billing Medicaid for services rendered to eligible students through the program or from earning federal or local funding for services provided.

(11) ADMISSION.—An eligible student may apply for admission to the program. If more eligible students apply for admission

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than the number of students permitted by the capacity established by the board of trustees, admission shall be determined by lottery.

(12) STUDENT HOUSING.—Notwithstanding ss. 409.1677(3)(d) and 409.176, Florida Statutes, or any other provision of law, an operator may house and educate dependent, at-risk youth in its residential school for the purpose of facilitating the mission of the program and encouraging innovative practices.

(13) ANNUAL REPORT.—

(a) The State Board of Education shall issue an annual report for each college-preparatory boarding academy which includes all information applicable to schools.

(b) Each college-preparatory boarding academy shall report to the Department of Education, in the form and manner prescribed in the contract, the following information:

1. The total number of students enrolled in the academy;

2. The number of students enrolled in the academy who are receiving special education services pursuant to an individual education plan; and

3. Any additional information specified in the contract.

(c) The operator shall comply with s. 1002.33, Florida Statutes, and shall annually assess reading and mathematics skills. The operator shall provide the student’s legal guardians with sufficient information on whether the student is reading at grade level and whether the student gains at least a year’s worth of learning for every year spent in the program.

(14) RULES.—The State Board of Education shall adopt rules to administer this section. These rules must identify any existing rules that are applicable to the program and preempt

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any other rules that are not specified for the purpose of clarifying the rules that may be conflicting, redundant, or that result in an unnecessary burden on the program or the operator.

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

And the title is amended as follows:

Delete line 25

and insert:

creating the College-Preparatory Boarding Academy Pilot Program for dependent or at-risk students; providing a purpose for the program; requiring that the State Board of Education implement the program; providing definitions; requiring the state board to select a private nonprofit corporation to operate the program if certain qualifications are met; requiring that the state board request proposals from private nonprofit corporations; providing requirements for such proposals; requiring that the state board enter into a contract with the operator of the academy; requiring that the contract contain specified requirements; requiring that the operator adopt bylaws, subject to approval by the state board; requiring that the operator adopt an outreach program with the local education agency or school district and community; providing that the academy is a public school and part of the state's education program; providing program funding guidelines; limiting the capacity of eligible students attending the academy; requiring that enrolled students remain under case


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management services and the supervision of the lead agency; authorizing the operator to appropriately bill Medicaid for services rendered to eligible students or earn federal or local funding for services provided; providing for eligible students to be admitted by lottery if the number of applicants exceeds the allowed capacity; authorizing the operator to board dependent, at-risk students; requiring that the state board issue an annual report and adopt rules; 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 404
INTRODUCER:	Senators Wise and Lynn
SUBJECT:	Transition-to-Adulthood Services
DATE:	April 5, 2011
REVISED:	

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

I. Summary:

The bill makes changes to ch. 985, F.S., relating to juvenile justice, to provide transition-to-adulthood services to older youth who are in the custody of, or under the supervision of, the Department of Juvenile Justice (DJJ).

The bill requires that transition-to-adulthood services for a youth be part of an overall plan leading to the total independence of the child from DJJ's supervision, and the bill specifies the requirements of the overall plan.

The bill also provides that youth who are adjudicated delinquent and are in the legal custody of the Department of Children and Family Services (DCF) may, if eligible, receive DCF's independent living transition services pursuant to s. 409.1451, F.S. Adjudication of delinquency may not be considered, by itself, as disqualifying criteria for eligibility in DCF's Independent Living Program. This is consistent with current DCF policy.[1]

The bill also permits a court to retain jurisdiction for a year beyond the child's 19th birthday if he or she is participating in the transition-to-adulthood program.

This bill substantially amends sections 985.03 and 985.0301, Florida Statutes. This bill creates section 985.461, Florida Statutes.

[1] Dep't of Children and Families, *Staff Analysis and Economic Impact SB 404* (Jan. 25, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

II. Present Situation:

Florida Juvenile Justice System[2]

Historically, Florida provided services to children who are delinquent under a "rehabilitative" model of justice. When all "proceedings relating to children" were under the auspices of the Department of Health and Rehabilitative Services (HRS),[3] HRS's approach to children involved in dependency proceedings or delinquency proceedings was the same, which was to provide social services to the child and his or her family. Provisions relating to both dependent and delinquent children were contained in ch. 39, F.S.

The first of a number of efforts to shift the state's juvenile justice system away from a social services model occurred in 1994. The Legislature created the Department of Juvenile Justice and provided for the transfer of powers, duties, property, records, personnel, and unexpended balances of related appropriations and other funds from HRS's Juvenile Justice Program Office to the new department.[4] The Department of Juvenile Justice (DJJ or department) was assigned responsibility for children who were delinquent and children and families who were in need of services (CINS/FINS).[5] Statutory provisions relating to children being served in the juvenile justice system remained in ch. 39, F.S., and most of the new department's employees were former HRS employees.

In 1997, while few changes were made to substantive law, provisions relating to children who were delinquent and CINS/FINS were removed from ch. 39, F.S. Provisions relating to CINS/FINS were placed in newly created ch. 984, F.S., and provisions relating to children who are delinquent were placed in newly created ch. 985, F.S.[6]

In 2000, comprehensive legislation, known as the "Tough Love Law," provided statutory authority for DJJ to change its organizational structure. This legislation signified the most dramatic policy shift away from the social services model and toward a criminal justice approach.[7] However, even under the "Tough Love" plan, DJJ maintains that:

> [T]he juvenile justice system continued to be operationally and philosophically distinct from the adult criminal justice system. Florida continues to segregate juveniles from their adult counterparts, although there has been an expansion of the circumstances under which a juvenile can be prosecuted as an adult. Youth

[2] Information contained in this section of the Present Situation of this bill analysis is from the Department of Juvenile Justice's website. Florida Dep't of Juvenile Justice, *History of the Juvenile Justice System in Florida*, http://www.djj.state.fl.us/AboutDJJ/history.html (last visited Mar. 21, 2011).

[3] The Department of Health and Rehabilitative Services (HRS) was renamed the Department of Children and Family Services (DCF) in 1996. Chapter 96-403, s. 2, Laws of Fla.

[4] Chapter 94-209, s. 1, Laws of Fla.

[5] The term "child in need of services" means a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the Department of Juvenile Justice or the Department of Children and Family Services for an adjudication of dependency or delinquency. The child must also be found by the court to be habitually truant from school, to have persistently run away from home, or to have persistently disobeyed the reasonable demands of his or her parents and to be beyond their control. Section 984.03(9), F.S.

[6] Chapter 97-238, Laws of Fla.

[7] Five bills passed in the 2000 session comprise the Tough Love Law: ch. 2000-137, ch. 2000-136, ch. 2000-135, ch. 2000-134, and ch. 2000-119, Laws of Fla. *See* Senate Bills 69, 1192/80, 1196, 1548, 2464 (2000).

> continue to be managed under a strategy of redirection and rehabilitation, rather than punishment. Although the State strengthened its hold on juvenile delinquents under the "Tough Love" plan, the system maintained focus on "treatment" designed to effect positive behavioral change.[8]

The department is currently required to provide independent living services as a program component of both the early delinquency intervention and the serious or habitual juvenile offender programs.[9]

The department is also tasked with providing conditional-release services to youth exiting juvenile justice residential programs. Conditional release is the care, treatment, help, and supervision provided to juveniles released from residential commitment programs to promote rehabilitation and prevent recidivism.[10] The program is intended to help prepare youth for a successful transition from DJJ commitment back to the community. Each youth committed to a DJJ residential program is to be assessed to determine the need for conditional-release services upon release from the program.[11] The department may also supervise the juvenile when released into the community from a residential program and provide such counseling and other services as may be necessary for families and assisting families' preparations for the return of the child.[12]

Independent Living Transition Services for Dependent Children[13]

Each year thousands of dependent children leave state foster care systems because they reach the age of 18 and are no longer eligible for out-of-home care. Since the early 1980's, research and anecdotal evidence have indicated that many of these young adults experience numerous difficulties in their attempts to achieve self-sufficiency. When compared to young adults with no exposure to the child welfare system, former foster youth are less likely to earn a high school diploma or GED and, subsequently, have lower rates of college attendance.[14] They suffer more from mental health problems; have a higher rate of involvement with the criminal justice system; are more likely to have a difficult time achieving financial independence, thus increasing their reliance on public assistance; and experience high rates of housing instability and homelessness.[15]

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[8] Florida Dep't of Juvenile Justice, *supra* note 2.
[9] *See* ss. 985.47 and 985.61, F.S.
[10] Section 985.46(1)(a), F.S.
[11] Section 985.46(2)(c), F.S.
[12] Section 985.46(3), F.S.
[13] Information contained in this section of the Present Situation of this bill analysis is from an interim report by the Committee on Children, Families, and Elder Affairs. See Comm. Children, Families, and Elder Affairs, The Florida Senate, *Review of the Provisions of Independent Living Services to Minors* (Interim Report 2010-105) (Nov. 2009), *available at* http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-105cf.pdf (last visited Mar. 21, 2011).
[14] Wilhelmina A. Leigh et al., *Aging out of the Foster Care System to Adulthood: Findings, Challenges, and Recommendations*, JOINT CTR. FOR POLITICAL AND ECONOMIC STUDIES, HEALTH POLICY INSTITUTE, 3-4 (Dec. 2007) (on file with the Senate Committee on Children, Families, and Elder Affairs) (citing Mark Courtney, *Youth Aging Out of Foster Care*, NETWORK ON TRANSITIONS TO ADULTHOOD, Policy Brief Issue 19 (April 2005), *available at* http://www.transad.pop.upenn.edu/downloads/courtney--foster%20care.pdf (last visited Mar. 21, 2011)).
[15] *Id.*

The federal government responded to the needs of foster care youth who age out by enacting the Foster Care Independence Act of 1999 (known as the CFCIP or the Chafee Act).[16] The Chafee Act provides states with flexible funding that enables programs to be designed and conducted to:

- Identify and assist youths who are likely to remain in foster care until 18 years of age;
- Provide education, training, and services necessary to obtain employment for those youths;
- Prepare those youths to enter postsecondary training and education institutions; and
- Provide support through mentors and the promotion of interactions with dedicated adults.[17]

Age restrictions were also eliminated, allowing states to offer independent living services to youth earlier than age 16.[18] The Chafee Act grants wide discretion to the states, allowing them to set their own criteria regarding which foster care youths receive services.[19] However, states must use objective criteria for determining eligibility for benefits and services under the programs and for ensuring fair and equitable treatment of benefit recipients.[20]

With the enactment of federal legislation and increased available funding, the 2002 Florida Legislature established a new framework for the state's independent living transition services to be provided to older youth in foster care.[21] Specifically provided for was a continuum of independent living transition services to enable youth who are 13 to 17 years of age and in foster care to develop the skills necessary for successful transition to adulthood and self-sufficiency. Service categories established for minors in foster care include the following:[22]

CATEGORIES OF SERVICES	SERVICES INCLUDED	ELIGIBILITY
Pre-independent living services	Life skills training, educational field trips and conferences.	13 and 14 year olds in foster care.
Life skills services	Training to develop banking and budgeting skills, parenting skills, and time management and organizational skills, educational support, employment training, and counseling.	15,16, and 17 year olds in foster care.
Subsidized independent living services	Living arrangements that allow the child to live independently of the daily care and supervision of an adult in a setting that is not required to be licensed under s. 409.175, F.S.	16 and 17 year olds who demonstrate IL skills.

For fiscal year 2009-2010, $35.6 million was budgeted for the Independent Living Transition Services Program from a number of sources.[23] This represents a $3.9 million increase in the

[16] Public Law No. 106-169, 113 Stat. 1822 (1999). Federal funds for independent living initiatives were first made available under the Consolidated Omnibus Budget Reconciliation Act of 1985.
[17] 42 U.S.C. s. 677 (2002).
[18] 42 U.S.C. s. 677(b)(2)(C) (2002).
[19] 42 U.S.C. s. 677(b)(2).
[20] 42 U.S.C. s. 677(b)(2)(E).
[21] The department provided independent living services to older youth in foster care prior to the creation of s. 409.1451, F.S., with provisions for those services appearing in a number of sections of Florida Statutes, including s. 409.145, F.S., relating to care of children (2001), and s. 409.165, F.S., relating to alternative care of children (2001).
[22] Section 409.1451(4), F.S. The legislation also contained provisions for young adults who are 18 to 23 years of age who were formerly in foster care, including aftercare services, the Road-to-Independence Program, and transitional support services. *See* s. 409.1451(5), F.S.
[23] Chafee ILP - $7,046,049; Chafee ETV - $2,396,966; Chafee ILP Match - $1,761,513; Chafee ETV Match - $599,241; General Revenue - $21,303,202; and Title IV-E - $2,495,646. Comm. on Children, Families, and Elder Affairs, *supra* note

budget from fiscal year 2008-2009, but is $2.9 million less than was actually spent in fiscal year 2008-2009.[24] The actual expenditure of the program in 2010 was almost $52 million.[25] The projected spending for 2011 is $58.5 million.[26]

If a dependent child is also adjudicated delinquent, DCF shares responsibility for that child with DJJ and while not specifically required by statute, DCF allows youth who are eligible for independent living transition services under s. 409.1451, F.S., and who have been adjudicated delinquent to receive those services.[27]

Court Jurisdiction
Except under certain specified circumstances, the court shall retain jurisdiction of a child who has committed a delinquent act, unless relinquished by its order, until the child reaches 19 years of age, with the same power over the child that the court had prior to the child becoming an adult.[28] Current law provides that the court may retain jurisdiction beyond 19 years of age under certain other circumstances, including, but not limited to:

- Jurisdiction may be retained until 22 years of age for a youth placed in a juvenile prison or in a high-risk or maximum-risk residential commitment program to allow the child to participate in a juvenile conditional release program.
- Jurisdiction may be retained until 21 years of age for a youth committed to the DJJ for placement in an intensive residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison, in a residential sex offender program, or in a program for serious or habitual juvenile offenders, solely for the purpose of the child completing the program.

III. Effect of Proposed Changes:

The bill creates s. 985.461, F.S., titled "Transition to adulthood," which the bill defines to mean "services that are provided for youth in the custody of the department [Department of Juvenile Justice] or under the supervision of the department and that have the objective of instilling the knowledge, skills, and aptitudes essential to a socially integrated, self-supporting adult life." The bill specifies that these services may include, but are not limited to:

- Assessment of the youth's ability and readiness for adult life;
- A plan for the youth to acquire the knowledge, information, and counseling necessary to make a successful transition to adulthood; and
- Services that have been proven effective toward achieving the transition to adulthood.

The bill provides legislative intent that the Department of Juvenile Justice (DJJ or department) may provide older youth in its custody or under its supervision opportunities to participate in

13.
[24] *Id*.
[25] Information from the Dep't of Children and Families provided to Professional Staff of the Senate Committee on Children, Families, and Elder Affairs on Mar. 2, 2011 (on file with the Senate Committee on Children, Families, and Elder Affairs).
[26] *Id*.
[27] Dep't of Children and Families, *supra* note 1.
[28] Section 985.0301(5)(a), F.S.

transition-to-adulthood services while in DJJ's commitment programs or in probation or conditional release programs in the community.[29] The bill specifies that these services should be reasonable and appropriate for the youths' respective ages or for any special needs the youth may have.

The bill also provides that youth who enter a DJJ placement from a foster care placement and who are in the legal custody of the Department of Children and Family Services (DCF) may, if eligible, receive DCF's independent living transition services pursuant to s. 409.1451, F.S. The bill also provides that court-ordered commitment or probation is not a barrier to eligibility for youth to receive the array of services available if they were in foster care. This is consistent with current DCF policy.[30]

The bill provides that adjudication of delinquency may not, by itself, disqualify a dependent youth for eligibility to receive independent living transition services from DCF.

The bill allows DJJ to:

- Assess a child's skills and abilities to live independently and become self sufficient;
- Develop a list of age-appropriate activities and responsibilities to be incorporated into the child's written case plan for any youth 17 years of age or older. The activities may include, but are not limited to, life skills such as banking and budgeting skills, interviewing and career planning skills, parenting skills, personal health management, and time management or organizational skills; educational support; employment training; and counseling;
- Provide information related to social security insurance benefits and public assistance;
- Request parental or guardian permission for the youth to participate in the transition-to-adulthood services. Upon such consent, the age-appropriate activities must be incorporated into the youth's written case plan. The case plan may include specific goals and objectives and must be reviewed and updated quarterly. The plan may not interfere with the parent's or guardian's rights to train the child; and
- Contract for transition-to-adulthood services, which include residential services and assistance, that allow for the child to live independently of the daily care and supervision of an adult in a setting that is not required to be licensed under s. 409.175, F.S. The bill provides for program eligibility to include youth at least 17 but not yet 19 years of age and who are not a danger to the public and have a demonstrated sufficient skills and aptitude for living under decreased adult supervision.

The bill requires that transition-to-adulthood services be part of an overall plan leading to the total independence of the child from DJJ's supervision. The plan must include:

- A description of the child's skills and a plan for learning additional identified skills;
- The behavior that the child has exhibited which indicates an ability to be responsible and a plan for developing additional responsibilities;
- The provision for future educational, vocational, and training skills;

[29] This appears to be a similar authority to that which currently exists in the conditional release program operated by DJJ for youth transitioning back to the community. See s. 985.46, F.S.
[30] Dep't of Children and Families, *supra* note 1.

- Present financial and budgeting capabilities and a plan for improving resources and abilities;
- A description of the proposed residence;
- Documentation that the child understands the specific consequences of his or her conduct in such a program;
- Documentation of proposed services to be provided by DJJ and other agencies, including the type of services and the nature and frequency of contact; and
- A plan for maintaining or developing relationships with family, other adults, friends, and the community.

These changes will permit DJJ to provide services to youth in their custody or supervision which may increase a youth's ability to live independently and become a self-sufficient adult.

The bill also amends s. 985.0301(5)(a), F.S., to allow a court to retain jurisdiction for an additional 365 days following a child's 19th birthday if the child is participating in a DJJ transition-to-adulthood program. The bill also provides that the transition services created in s. 985.461, F.S., require voluntary participation by affected youth and are not intended to create an extension of involuntary court-sanctioned residential commitment.

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:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Neither the Department of Children and Family Services nor the Department of Juvenile Justice expects there to be a fiscal impact.[31]

VI. Technical Deficiencies:

There are several places in the bill where the language appears duplicative. For example, lines 81-83 provide that the Department of Juvenile Justice may "develop a list of age-appropriate activities and responsibilities to be incorporated in the child's written case plan . . ." and lines 93-95 provide that "age-appropriate activities shall be incorporated into the youth's written case plan."

Additionally, the terms "child" and "youth" are used interchangeably throughout the bill. The Legislature may wish to amend the bill to use one term in order to provide consistency.

VII. Related Issues:

The Department of Children and Family Services (DCF) is attempting to amend portions of chs. 39 and 409, F.S., to support the federal H.R. 6893, "Fostering Connections to Success and Increasing Adoptions Act," passed by the 110th Congress in 2008. If these amendments are made, DCF's current Independent Living services will be modified. According to DCF, if the changes to chs. 39 and 409, F.S., are made to include the Fostering Connections to Success and Increasing Adoptions Act, there may be a fiscal impact to implement this bill.[32]

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.

[31] Dep't of Children and Families, *supra* note 1; Department of Juvenile Justice, Senate Bill 404 (Mar. 1, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[32] Dep't of Children and Families, *supra* note 1.

387002

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete lines 11 - 14
and insert:
Section 1. Subsection (1) of section 943.0438, Florida Statutes, is amended, and paragraph (e) is added to subsection (2) of that section, to read:
943.0438 Athletic coaches for independent sanctioning authorities.—
(1) As used in this section, the term:
(a) "Athletic coach" means a person who:
1. Is authorized by an independent sanctioning authority to

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work for 20 or more hours within a calendar year, whether for compensation or as a volunteer, for a youth athletic team based in this state; and

2. Has direct contact with one or more minors on the youth athletic team.

(b) "Independent sanctioning authority" means a governmental agency or a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in this state if the team includes one or more minors and is not affiliated with a private school as defined in s. 1002.01.

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

And the title is amended as follows:

Delete line 3

and insert:

943.0438, F.S.; redefining the term "independent sanctioning authority" to include a governmental agency; requiring certain sanctioning bodies

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 748
INTRODUCER:	Senator Ring
SUBJECT:	Youth Athletic Teams
DATE:	March 30, 2011
REVISED:	

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

I. Summary:

The bill requires the independent sanctioning authority of a youth athletic team to disqualify a person from serving as an athletic coach of a youth athletic team, if any team member is 12 years of age or younger and the coach is suspended, ejected, or otherwise removed from a game by a game official. The period of disqualification ("suspension") is for the remainder of the team's season.

The bill also provides for a process to appeal the suspension to the local sanctioning authority.

This bill substantially amends the following section of the Florida Statutes: 943.0438.

II. Present Situation:

Section 943.0438(1), F.S., defines an "independent sanctioning authority" as a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in Florida that includes one or more minors and is not affiliated with a private school.

This same subsection defines "athletic coach" as a person who is authorized by an independent sanctioning authority to work for 20 or more hours within a calendar year, whether for compensation or as a volunteer, for a youth athletic team based in Florida; and has direct contact with one or more minors on the youth athletic team.

An independent sanctioning authority is currently required to conduct background screenings on each current and prospective athletic coach, disqualify an athletic coach who appears on the

Florida or federal registry of sexual predators and sexual offenders, provide written notice to a disqualified athletic coach, and maintain specified documentation.

The statute does not actually sanction or penalize an independent sanctioning authority for failure to comply with requirements of the statute, but there is an incentive to comply. In a civil action for the death of, or injury or damage to, a third person caused by the intentional tort of an athletic coach that relates to alleged sexual misconduct by the athletic coach, there is a rebuttable presumption that the independent sanctioning authority was not negligent in authorizing the athletic coach if the authority complied with the background screening and disqualification requirements of the statute prior to such authorization.

III. Effect of Proposed Changes:

The bill amends s. 943.0438, F.S., to require the independent sanctioning authority of a youth athletic team to disqualify a person from serving as an athletic coach of a youth athletic team, if any team member is 12 years of age or younger and the coach is suspended, ejected, or otherwise removed from a game by a game official. The period of disqualification ("suspension") is for the remainder of the team's season.

The bill provides that, upon receiving notification of such suspension, a coach may appeal the suspension to the local sanctioning authority. The authority must render a decision and notify the coach of its decision within one week after receiving a notice of appeal.

The bill takes effect on 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:

Suspended athletic coaches of youth athletic teams may be subject to a longer period of suspension under the bill than they might currently receive under rules, bylaws, etc., of

the independent sanctioning authority. Suspension may affect a coach's compensation if the coach would be compensated but for the suspension.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Chapter 493, F.S., relates to the organization and duties of the Florida Department of Law Enforcement (FDLE). The logical nexus for the placement in ch. 943, F.S., of provisions relevant to an athletic coach of a youth athletic team is that those provisions involve a search of the coach's name or other identifying information against the Florida and federal registries of sexual predators and sexual offenders. The FDLE operates the Florida registry. In comparison, the provisions of the bill do not require the FDLE to do anything or require an independent sanctioning authority to do something which requires FDLE's assistance or access to a service FDLE provides. However, at the present time, there does not appear to be any other chapter of the Florida Statutes that addresses these coaches or that could be viewed as relevant to the provisions of the bill.

The bill does not contain any provision for sanctions or penalties if the independent sanctioning authority fails to comply with the requirements of the bill. However, current provisions of the statute do not include sanctions or penalties for failure to comply with requirements of the statute.

It is unclear if a game official's decision to suspend, eject, or otherwise remove a coach from a game might currently be subject to a review or grievance process by which the official's decision could be overturned or overruled by a designated reviewing or grievance authority or an independent sanctioning authority. If such a process is available, the time for the authority to render a decision may not parallel the time to render a decision on an appeal of a suspension as provided in the bill.

There is insufficient information to determine if all game officials in a particular sport in which youth athletic teams participate suspend, eject, or otherwise remove an athletic coach from a game for the same acts.

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.

637288

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete lines 10 - 17
and insert:
Section 1. Subsection (1) of section 810.08, Florida Statutes, is amended to read:
810.08 Trespass in structure or conveyance.—
(1)(a) Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person

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

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

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

810.09 Trespass on property other than structure or conveyance.—

(1)

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

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

And the title is amended as follows:

Delete lines 2 - 5

and insert:

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

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 786
INTRODUCER:	Judiciary Committee and Senator Diaz de la Portilla
SUBJECT:	Landlord and Tenant
DATE:	March 30, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Maclure	JU	**Fav/CS**
2.	Cellon	Cannon	CJ	**Pre-Meeting**
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill provides that the Florida Residential Landlord and Tenant Act does not apply to an occupancy for less than 30 days by a person not legally entitled to occupy the premises. The bill additionally provides that a person who refuses to depart the premises is in violation of criminal trespass in a structure or conveyance, or criminal trespass on property other than a structure or conveyance, as applicable, and may be removed from the premises by any law enforcement officer.

This bill amends section 83.42, Florida Statutes.

II. Present Situation:

Mortgage Foreclosure Crisis

The mortgage foreclosure crisis has left many homes vacant and abandoned. According to data released by the Mortgage Bankers Association, Florida has the nation's highest inventory of homes in distress.[1] Cities and other communities are taking steps to manage vacant and

[1] Toluse Olorunnipa, *Florida's Foreclosure Rate is Nation's Highest*, The Miami Herald (Feb. 17, 2011).

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

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

Florida Residential Landlord and Tenant Act

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

[2] The United States Conference of Mayors, *Impact of the Mortgage Foreclosure Crisis on Vacant and Abandoned Properties in Cities, A 77-City Survey* (June 2010), http://www.usmayors.org/publications/2010%20VAP%20Report.pdf (last visited Mar. 17, 2011).
[3] American Financial Services Association, *Vacant and Abandoned Property Municipal Ordinances*, http://www.afsaonline.org/library/files/sga_resources/AFSA%20Vacant%20and%20Abandoned%20Property%20Ordinances%20Dec%202010%20FINAL.pdf (last visited Mar. 17, 2011).
[4] MIAMI, FL, CHAPTER 10, ARTICLE IV (10-16-2008).
[5] See Natalie O'Neill, *Squatters Don't Cry. Just Move Into One of Those Empty Homes Around the Corner*, Miami New Times (Nov. 20, 2008); John Leland, *With Advocates' Help, Squatters Call Foreclosures Home*, N.Y. Times (Apr. 10, 2009).
[6] Telephone interview with City of Miami, Florida attorneys.
[7] Section 83.41, F.S.
[8] Section 83.59, F.S.
[9] *Id.*

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

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

The Act does not apply to:

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

Criminal Trespass

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

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

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

[10] Section 83.62, F.S.
[11] Section 83.42, F.S.
[12] Section 810.08, F.S.
[13] *Id.*

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

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

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

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

III. Effect of Proposed Changes:

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

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

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

Other Potential Implications:

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

[14] Section 810.08, F.S.
[15] Section 810.09, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on March 22, 2011:
The committee substitute revises the exemption to the Florida Residential Landlord and Tenant Act so that it applies to an occupancy for less than 30 days by a person not legally entitled to occupy the premises, rather than an occupancy for less than 60 days under the original bill.

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

B. Amendments:

None.

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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. Subsection (22) is added to section 318.18, Florida Statutes, to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(22) For a person driving any motor vehicle upon the highways of this state while the person's license or privilege to drive is canceled, suspended, or revoked in violation of s.


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322.34(2), in addition to the fine under paragraph (3)(a), upon:

(a) A first conviction, $250.

(b) A second conviction, $500.

(c) A third or subsequent conviction, $1,000.

Section 2. Subsection (22) is added to section 318.21, Florida Statutes, to read:

318.21 Disposition of civil penalties by county courts.—All civil penalties received by a county court pursuant to the provisions of this chapter shall be distributed and paid monthly as follows:

(22) Notwithstanding subsections (1) and (2), the proceeds from the penalties imposed pursuant to s. 318.18(22) shall be distributed as follows:

(a) For violations committed within a municipality, 40 percent shall be distributed to the municipality, 40 percent shall be distributed to the county, and 20 percent shall be distributed to the law enforcement agency that issued the citation.

(b) For violations committed outside a municipality, 80 percent shall be distributed to the county and 20 percent shall be distributed to the enforcement agency that issued the citation.

Section 3. Section 322.34, Florida Statutes, is amended to read:

322.34 Driving while license suspended or~~,~~ revoked~~, canceled, or disqualified~~.—

(1) ~~Except as provided in subsection (2),~~ Any person whose driver's license or driving privilege has been ~~canceled,~~ suspended~~,~~ or revoked, except a person whose driver's license or

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driving privilege has been suspended or revoked pursuant to s. 322.28 or a "habitual traffic offender" as defined in s. 322.264, who drives a vehicle upon the highways of this state while such license or privilege is ~~canceled,~~ suspended~~,~~ or revoked commits ~~is guilty of~~ a moving violation, punishable as provided in chapter 318.

(2) Any person whose driver's license or driving privilege has been ~~canceled,~~ suspended~~,~~ or revoked pursuant to s. 322.28, or as a habitual traffic offender as ~~provided by law, except persons~~ defined in s. 322.264, who, knowing of such ~~cancellation,~~ suspension~~,~~ or revocation, drives any motor vehicle upon the highways of this state while such license or privilege is ~~canceled,~~ suspended~~,~~ or revoked, upon:

(a) A first conviction is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A second conviction is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A third or subsequent conviction is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The element of knowledge is satisfied if the person has been previously cited as provided in subsection (1); or the person admits to knowledge of the ~~cancellation,~~ suspension~~,~~ or revocation; or the person received notice as provided in subsection (4). There shall be a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as

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provided in subsection (4) appears in the department's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.

(3) In any proceeding for a violation of this section, a court may consider evidence, other than that specified in subsection (2), that the person knowingly violated this section.

(4) Any judgment or order rendered by a court or adjudicatory body or any uniform traffic citation that ~~cancels,~~ suspends~~,~~ or revokes a person's driver's license must contain a provision notifying the person that his or her driver's license has been ~~canceled,~~ suspended~~,~~ or revoked.

(5) The motor vehicle being driven at the time of the offense in subsection (2) shall be immediately impounded if the driver is the registered owner of the vehicle, and the vehicle may not be released from impoundment before the impoundment surcharge is paid. The impoundment surcharge for:

(a) A first offense, is $250 before release of the vehicle from impoundment.

(b) A second offense, is $500 before release of the vehicle from impoundment.

(c) A third or subsequent offense, is $1,000 before release of the vehicle from impoundment.

The proceeds from impoundment surcharges shall be distributed as civil penalties pursuant to s. 318.21(22). Any impoundment surcharge collected under this subsection shall be credited toward the civil penalty amount assessed pursuant to s. 318.18(22).


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(6)~~(5)~~ Any person whose driver's license has been revoked pursuant to s. 322.264, except for a violation of s. 322.264(1)(d), as a ~~(~~habitual traffic offender~~)~~ and who drives any motor vehicle upon the highways of this state while such license is revoked commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7)~~(6)~~ Any person who operates a motor vehicle:

(a) Without having a driver's license as required under s. 322.03; or

(b) While his or her driver's license or driving privilege is canceled, suspended, or revoked pursuant to s. 316.655, s. 322.26(8), s. 322.27(2), or s. 322.28(2) or (4),

and who by careless or negligent operation of the motor vehicle causes the death of or serious bodily injury to another human being commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(8)~~(7)~~ Any person whose driver's license or driving privilege has been canceled, suspended, revoked, or disqualified and who drives a commercial motor vehicle on the highways of this state while such license or privilege is canceled, suspended, revoked, or disqualified, upon:

(a) A first conviction is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A second or subsequent conviction is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.


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(9) ~~(8)~~ (a) Upon issuing a citation to ~~the arrest of~~ a person for a violation of subsection (2), the offense of driving while the person's driver's license or driving privilege is suspended or revoked, the law enforcement ~~arresting~~ officer shall immediately impound the vehicle if the driver is the registered owner of the vehicle. ~~determine:~~

~~1. Whether the person's driver's license is suspended or revoked.~~

~~2. Whether the person's driver's license has remained suspended or revoked since a conviction for the offense of driving with a suspended or revoked license.~~

~~3. Whether the suspension or revocation was made under s. 316.646 or s. 627.733, relating to failure to maintain required security, or under s. 322.264, relating to habitual traffic offenders.~~

~~4. Whether the driver is the registered owner or coowner of the vehicle.~~

~~(b) If the arresting officer finds in the affirmative as to all of the criteria in paragraph (a), the officer shall immediately impound or immobilize the vehicle.~~

(b) ~~(c)~~ Within 7 business days after the date the vehicle is impounded ~~arresting agency impounds or immobilizes the vehicle~~, ~~either~~ the law enforcement ~~arresting~~ agency or the towing service, whichever is in possession of the vehicle, shall send notice pursuant to s. 713.78 ~~by certified mail~~ to any ~~coregistered~~ owners of the vehicle other than the person who was cited, to the traffic violations bureau, ~~arrested~~ and to each person of record claiming a lien against the vehicle. All costs and fees for the impoundment ~~or immobilization~~, including the


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cost of notification, must be paid by the owner of the vehicle or, if the vehicle is leased, by the person leasing the vehicle.

(c) ~~(d) Either~~ The law enforcement ~~arresting~~ agency or the towing service, whichever is in possession of the vehicle, shall determine whether any vehicle impounded ~~or immobilized~~ under this section has been leased or rented or if there are any persons of record with a lien upon the vehicle. ~~Either~~ The law enforcement ~~arresting~~ agency or the towing service, whichever is in possession of the vehicle, shall send notice pursuant to s. 713.78 ~~notify by express courier service with receipt or certified mail~~ within 7 business days after the date of the ~~immobilization or~~ impoundment of the vehicle, to the registered owner and all persons having a recorded lien against the vehicle that the vehicle has been impounded ~~or immobilized~~. A lessor, rental car company, or lienholder may ~~then~~ obtain the vehicle, upon payment of any lawful towing or storage charges. If the vehicle is a rental vehicle subject to a written contract, the charges may be separately charged to the renter, in addition to the rental rate, along with other separate fees, charges, and recoupments disclosed on the rental agreement. If the storage facility fails to provide timely notice to a lessor, rental car company, or lienholder as required by this paragraph, the storage facility shall be responsible for payment of any towing or storage charges necessary to release the vehicle to a lessor, rental car company, or lienholder that accrue after the notice period, which charges may then be assessed against the driver of the vehicle if the vehicle was lawfully impounded ~~or immobilized~~.

(d) ~~(c)~~ Except as provided in paragraph (c) ~~(d)~~, the vehicle


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shall remain impounded ~~or immobilized for any period imposed by the court~~ until payment of the applicable impoundment surcharge required under s. 318.18 and:

1. The person retrieving the vehicle ~~owner~~ presents to the law enforcement agency proof of a valid driver's license, proof of ownership of the vehicle or written consent by the owner authorizing release to the person, and proof of insurance ~~to the arresting agency~~; or

2. The owner presents to the law enforcement agency proof of sale of the vehicle ~~to the arresting agency~~ and the buyer presents proof of insurance to the ~~arresting~~ agency.

If proof is not presented within 35 days after the impoundment ~~or immobilization~~, a lien shall be placed upon such vehicle pursuant to s. 713.78.

(e) ~~(f)~~ The owner of a vehicle that is impounded ~~or immobilized~~ under this subsection may, within 10 days after the date the owner has knowledge of the location of the vehicle, file a complaint in the county in which the owner resides to determine whether the vehicle was wrongfully taken or withheld. Upon the filing of a complaint, the owner or lienholder may have the vehicle released by posting with the court a bond or other adequate security equal to the amount of the costs and fees for impoundment ~~or immobilization~~, including towing or storage, to ensure the payment of such costs and fees if the owner or lienholder does not prevail. When the vehicle owner or lienholder does not prevail on a complaint that the vehicle was wrongfully taken or withheld, he or she must pay the accrued charges for the ~~immobilization or~~ impoundment, including any

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towing and storage charges assessed against the vehicle. When the bond is posted and the fee is paid as set forth in s. 28.24, the clerk of the court shall issue a certificate releasing the vehicle. At the time of release, after reasonable inspection, the owner must give a receipt to the towing or storage company indicating any loss or damage to the vehicle or to the contents of the vehicle.

(f) Notwithstanding any other provision of this section, the court shall order the release of the vehicle from impoundment if the court finds undue hardship to a family relying upon use of the vehicle without any other means of private transportation.

(7)~~(9)~~(a) A motor vehicle that is driven by a person under the influence of alcohol or drugs in violation of s. 316.193 is subject to seizure and forfeiture under ss. 932.701-932.706 and is subject to liens for recovering, towing, or storing vehicles under s. 713.78 if, at the time of the offense, the person's driver's license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.

(b) The law enforcement officer shall notify the Department of Highway Safety and Motor Vehicles of any impoundment or seizure for violation of paragraph (a) in accordance with procedures established by the department.

(c) Notwithstanding s. 932.703(1)(c) or s. 932.7055, when the seizing agency obtains a final judgment granting forfeiture of the motor vehicle under this section, 30 percent of the net proceeds from the sale of the motor vehicle shall be retained by the seizing law enforcement agency and 70 percent shall be deposited in the General Revenue Fund for use by regional


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workforce boards in providing transportation services for participants of the welfare transition program. In a forfeiture proceeding under this section, the court may consider the extent that the family of the owner has other public or private means of transportation.

(8) ~~(10)~~ (a) Notwithstanding any other provision of this section, if a person does not have a prior forcible felony conviction as defined in s. 776.08, the procedures ~~penalties~~ provided in paragraph (b) apply if a person's driver's license or driving privilege is canceled, suspended, or revoked for:

1. Failing to pay child support as provided in s. 322.245 or s. 61.13016;

2. Failing to pay any other financial obligation as provided in s. 322.245 other than those specified in s. 322.245(1);

3. Failing to comply with a civil penalty required in s. 318.15;

4. Failing to maintain vehicular financial responsibility as required by chapter 324;

5. Failing to comply with attendance or other requirements for minors as set forth in s. 322.091; or

6. Having been designated a habitual traffic offender under s. 322.264(1)(d) as a result of suspensions of his or her driver's license or driver privilege for any underlying violation listed in subparagraphs 1.-5.

~~(b)1. Upon a first conviction for knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed in subparagraphs (a)1.-6., a person commits a misdemeanor of the second degree, punishable as~~

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~~provided in s. 775.082 or s. 775.083.~~

~~2. Upon a second or subsequent conviction for the same offense of knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed in subparagraphs (a)1.-6., a person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

(b)~~(11)(a)~~ A person who does not hold a commercial driver's license and who is cited for an offense of knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed in paragraph ~~(10)~~(a) may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. In such case, adjudication shall be withheld and the clerk of the court, designated official, or authorized operator of a traffic violations bureau shall issue a certificate releasing the vehicle upon payment of the cost of towing and storing the vehicle. However, no election shall be made under this subsection if such person has made an election under this subsection during the preceding 12 months. A person may not make more than three elections under this subsection.

(c)~~(b)~~ If adjudication is withheld under paragraph (b) ~~(a)~~, such action is not a conviction.

Section 4. 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:

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Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to driving without a valid driver's license; amending s. 318.18, F.S.; providing an additional fine for a violation of specified provisions relating to driving with a canceled, suspended, or revoked driver's license or driving privilege; providing increased fine amounts for second or subsequent violations; amending s. 318.21, F.S.; providing for distribution of such fines collected; amending s. 322.34, F.S.; revising provisions relating to a conviction of the offense of driving while a person's driver's license or driving privilege is canceled, suspended, or revoked; requiring immediate impoundment of the motor vehicle; conforming provisions; revising penalties for knowingly driving while the driver's license or driving privilege is canceled, suspended, or revoked; revising procedures for impoundment of the vehicle; 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:	CS/SB 792
INTRODUCER:	Transportation Committee and Senator Diaz de la Portilla
SUBJECT:	Driving Without a Valid Driver's License
DATE:	April 5, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	**Fav/CS**
2.	Dugger	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:

The bill removes criminal penalties for knowingly driving without a valid driver's license. In addition, the bill deletes the element of knowledge and satisfaction of certain criteria establishing such knowledge for violation of the offense of driving while a person's driver's license or driving privilege is canceled, suspended, or revoked. Specifically, the bill provides any person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, except a habitual traffic offender, who, drives any motor vehicle upon the highways of this state while the license or privilege is canceled, suspended, or revoked commits a moving violation, punishable as provided in ch. 318, F.S., and the motor vehicle being driven at the time of the offense must be immediately impounded.

The bill provides a person who drives any motor vehicle upon the highways while the person's license or privilege to drive is canceled, suspended, or revoked in violation of s. 322.34(2), F.S., in addition to the fine under s. 318.18(3)(a), F.S., must pay:

- For a first offense, $250 before release of the vehicle from impoundment;
- For a second offense, $500 before release of the vehicle from impoundment; or
- For a third or subsequent offense, $1,000 before release of the vehicle from impoundment.

In addition, the bill provides for the distribution of fines collected and the apportionment between the municipality, the county, and the agency or entity towing and storing the vehicle.

This bill amends ss. 318.18, 318.21, and 322.34 of the Florida Statutes.

II. Present Situation:

Section 318.18, F.S., specifies civil penalties for various violations.

Section 318.21, F.S., provides for the disposition of civil penalties by county courts.

Section 322.34(2), F.S., provides criminal penalties for knowingly driving with a suspended, revoked, or canceled license. Any person whose driver's license or driving privilege has been suspended, revoked, or canceled (except a habitual traffic offender) who drives with knowledge of such suspension, revocation, or cancellation, commits a second degree misdemeanor on the first conviction (up to 30 days in jail and a $500 fine); a first degree misdemeanor on the second conviction (up to 60 days in jail and a $1,000 fine); and a third degree felony on the third or subsequent conviction (up to five years in prison and a $5,000 fine). (Subsection (1) of this section provides it is a moving violation if a person does not have knowledge of the suspension and drives with a suspended, revoked, or canceled license.)

The element of knowledge is satisfied if the person has been previously cited for driving with a suspended, revoked, or canceled license; or the person admits to knowledge of the cancellation, suspension, or revocation; or the person received notice as provided in s. 322.34(4), F.S. There shall be a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as provided in s. 322.34(4), F.S., appears in the Department of Highway Safety and Motor Vehicles' (DHSMV or department) records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.

A habitual traffic offender who drives with a suspended, revoked, or canceled license commits a third degree felony under s. 322.34(5), F.S. One way to become a habitual traffic offender is to drive with a suspended or revoked license three times within five years under s. 322.264(1)(d), F.S. Prior to 2008, there was no distinction under either of these statutes regarding what underlying violation was committed to qualify a person for a driving with a suspended license conviction. For instance, underlying violations can be for failing to pay child support, failing to pay court fines or fees, or failing to comply with a court order. However, during the 2008 Session, the Legislature passed CS/SB 1988 which subjects a person convicted of knowingly driving while his or her license is suspended, revoked, or cancelled for underlying violations as enumerated below, to a second degree misdemeanor penalty for the first conviction and a first degree misdemeanor penalty for the second or subsequent conviction.

Specifically, s. 322.34(10), F.S., provides the underlying enumerated violations (allowing a driver to be subject to a first degree misdemeanor penalty rather than the third degree felony penalty for a third or subsequent conviction) are as follows:

- Failing to pay child support under s. 322.245 or s. 61.13016, F.S.;

- Failing to pay any other financial obligation under s. 322.245, F.S., (other than those specified criminal offenses in s. 322.245(1), F.S.);
- Failing to comply with a required civil penalty (paying traffic tickets and fees) under s. 318.15, F.S.;
- Failing to maintain required vehicular financial responsibility under ch. 324, F.S.;
- Failing to comply with attendance or other requirements for minors under s. 322.091, F.S.; or
- Having been designated a habitual traffic offender under s. 322.264(1)(d), F.S., (driving with a suspended license three times in five years) as a result of license suspensions for any of the underlying violations listed above.

The first degree misdemeanor penalty is only available to drivers who do not have a prior forcible felony conviction.

Section 322.34(11), F.S., provides a person who does not hold a commercial driver license and who is cited for an offense of knowingly driving while his or her license is suspended, revoked, or canceled and the underlying suspension, revocation, or cancellation is non-driving related may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. In addition, this section allows adjudication to be withheld; however, a person may not make an election if an election has been made in the 12 months preceding an election, and a person may not make more than three elections. If adjudication is withheld, such action is not considered a conviction.

Section 322.34(8), F.S., requires law enforcement, upon the arrest of a person for the offense of driving while the person's driver's license or driving privilege is suspended or revoked, to impound or immobilize the vehicle of violators when the arresting officer determines the affirmative of all of the following criteria:

- Whether the person's driver's license is suspended or revoked;
- Whether the person's driver's license has remained suspended or revoked since a conviction for the offense of driving with a suspended or revoked license;
- Whether the suspension or revocation was made because of failure to maintain required security, or because the person is a habitual traffic offender; and
- Whether the driver is the registered owner or co-owner of the vehicle.

III. Effect of Proposed Changes:

The following is a section-by-section analysis of the bill:

Section 1 creates s. 318.18(22), F.S., to provide a person who drives any motor vehicle upon the highways while the person's license or privilege to drive is canceled, suspended, or revoked in violation of s. 322.34(2), F.S., in addition to the fine under s. 318.18(3)(a), F.S., must pay:

- For a first offense, $250 before release of the vehicle from impoundment;
- For a second offense, $500 before release of the vehicle from impoundment; or
- For a third or subsequent offense, $1,000 before release of the vehicle from impoundment.

Section 2 creates s. 318.21(22), F.S., to provide for the distribution of fines collected pursuant to s. 318.18(22), F.S., and the apportionment between the municipality, the county, and enforcement agency impounding the vehicle or the agency or entity that towed and stored the vehicle. Specifically for violations committed within a municipality, 40 percent of the moneys collected would go to the municipality, 40 percent to the county and 20 percent to the agency or company that stored the vehicle. For violations committed outside a municipality, 80 percent would be distributed to the county and 20 percent to the enforcement agency impounding the vehicle.

Section 3 amends s. 322.34(2), F.S., to remove criminal penalties for knowingly driving with an invalid driver's license. In addition, the bill deletes the element of knowledge and satisfaction of certain criteria establishing such knowledge for violation of the offense of driving while a person's driver's license or driving privilege is canceled, suspended, or revoked. Specifically, the bill provides any person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, except a habitual traffic offender, who drives any motor vehicle upon the highways of this state while the license or privilege is canceled, suspended, or revoked commits a moving violation, punishable as provided in ch. 318, F.S., and the motor vehicle being driven at the time of the offense must be immediately impounded.

The bill amends s. 322.34(6), F.S., to delete criteria that an arresting officer must determine prior to immediately impounding or immobilizing a vehicle of a person arrested for the violation of driving while the person's driver's license or driving privilege is suspended or revoked. The bill also eliminates the option to immobilize, and thereby requiring impoundment of, the vehicle. This section is amended to require a law enforcement officer to immediately impound the vehicle, upon issuing a citation to a person for a violation of s. 322.34(2), F.S., (driving while the person's driver's license or driving privilege is suspended or revoked). The vehicle must remain impounded until payment of the applicable amount required under s. 318.18, F.S., and:

- the person retrieving the vehicle presents to the law enforcement agency proof of a valid driver's license, proof of ownership of the vehicle or written consent by the owner authorizing release to the person, and proof of insurance; or
- the owner presents to the law enforcement agency proof of sale of the vehicle and the buyer presents proof of insurance to the agency.

The bill also amends s. 322.34(8), F.S., relating to financially based driver license suspensions, by providing that a person who does not hold a commercial driver's license and is cited for an offense of knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed in s. 322.34(8)(a), F.S., may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contender and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. In this case, adjudication shall be withheld and the clerk of the court, designated official or authorized operator of a traffic violations bureau shall issue a certificate releasing the vehicle upon payment of the cost of towing and storing the vehicle. A person may not make an election if an election has been made in the 12 months preceding an election, and a person may not make more than three elections in a lifetime. If the court withholds adjudication, this will not go on the driving record, and therefore will not count towards the habitual traffic offender status. The criminal

violations previously associated with those offenses that generally relate to financial concerns, not the driver's actual ability to operate a motor vehicle, are deleted.

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

Other Potential Implications:

According to DHSMV, the effect of this bill would be primarily on law enforcement agencies that will now be mandated to impound a vehicle in all cases of driving while license canceled, suspended or revoked, whereas currently that mandate only applies in very limited situations. This will result in a dramatic increase in the number of vehicles impounded. In 2009, there were 214,078 persons charged with knowingly driving while license canceled, suspended or revoked. This bill would require each of the vehicles being driven to be impounded, regardless of whether the operator is an owner of the vehicle or whether a properly licensed driver can be located to take control of the vehicle.[1]

As currently drafted in the bill, s. 322.34(5), F.S., provides criminal penalties for a violation of the offense involving a person whose driver's license or driving privilege has been canceled, suspended, revoked, or disqualified and who drives a commercial motor vehicle while such license or privilege is canceled, suspended, revoked, or disqualified, which was not affected by the bill. However, according to FDOT and DHSMV, the potential remains for the bill to apply to commercial motor vehicles. A law enforcement officer could issue a citation for a violation of s. 322.34(2), F.S., to a person operating a commercial motor vehicle with a canceled, suspended, or revoked driver's license, which would also require the impoundment of the commercial motor vehicle and its cargo.

According to FDOT and DHSMV, further clarification may be needed to ensure commercial motor vehicles are not unintentionally impacted.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[1] Department of Highway Safety and Motor Vehicles, *Agency Bill Analysis: SB 792 (*on file with the Senate Transportation Committee).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons cited for driving while the person's license or driving privilege is canceled, suspended, or revoked commits a moving violation and the bill requires the immediate impoundment of the motor vehicle being driven at the time of the offense. Violators will have to pay, in addition to the $60 fine and court costs associated with the moving violation, the costs of towing and storage of the impounded vehicle, a fine of $250 for a first offense, a fine of $500 for a second offense, and a fine of $1,000 for a third or subsequent offense, before the release of the vehicle from impoundment.

C. Government Sector Impact:

This bill may generate civil fine revenue for the state, county and local government, and law enforcement agencies, but the potential revenue is indeterminate.

According to DHSMV, the bill will have an indeterminate fiscal impact to the department. The mandatory impoundment of the vehicle, as regarded by this bill, will result in an officer waiting for a wrecker instead of resuming normal duties. As stated in the department's bill analysis, the requirement will decrease officer availability for other duties and potentially impact law enforcement statewide. There will also be minimal fiscal impact resulting from programming requirements, but, the cost would be absorbed within existing resources.[2]

VI. Technical Deficiencies:

The bill amends s. 322.34(2), F.S., to eliminate the element of knowledge and satisfaction of certain criteria establishing such knowledge for a violation of the offense of driving while a person's driver's license or driving privilege is canceled, suspended, or revoked. The element of knowledge was a distinguishing factor between ss. 322.34(1) and (2), F.S.

Currently in the bill as drafted, ss. 322.34(1) and (2), F.S., both provide any person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, except a habitual traffic offender, who drives any motor vehicle upon the highways of this state while the license or privilege is canceled, suspended, or revoked commits a moving violation, punishable as provided in ch. 318, F.S.; however, a violation of s. 322.34(2), F.S., requires additional penalties as established in s. 318.18(22), F.S., and the motor vehicle being driven at the time of the offense must be immediately impounded. Therefore, a violation of the same offense results in differing penalties depending on which section the law enforcement officer lists on the citation.

[2] *Id.*

In addition, s. 322.34(8)(b), F.S., relating to financially based driver license suspensions, still refers to an offense of knowingly driving while his or her license is suspended, revoked, or canceled; however, the bill eliminates the element of knowledge and satisfaction of certain criteria establishing such knowledge for a violation of the offense of driving while a person's driver's license or driving privilege is canceled, suspended, or revoked.

VII. Related Issues:

The department estimates impounding a vehicle will add 30 minutes to each traffic stop due to waiting for a wrecker to arrive. Therefore, based on 2009 citations (214,078), law enforcement statewide would spend over 100,000 hours of duty time implementing this aspect of the bill resulting in a comparable decrease in officer availability for other types of calls.[3]

Law enforcement agencies will also be required to have a person available to review the documents required to be presented to have the vehicle released. In the case of the Florida Highway Patrol (FHP), persons presenting such documents would be required in some cases to travel to the nearest FHP facilities, which could be several counties away or the FHP would have to make available a trooper to meet the vehicle owners.[4]

The department recommends allowing the towing service to verify the documents necessary to have a vehicle released.

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 Transportation on March 22, 2011:

- Reduces additional penalties imposed by the bill for violations of s. 322.34(2), F.S. The penalty for:
  - a first offense is reduced from $500 to $250,
  - a second offense is reduced from $1,000 to $500, and
  - a third or subsequent offense is reduced from $1,500 to $1,000.
- Changes the distribution of fines collected pursuant to s. 318.18(22), F.S., for violations committed outside a municipality to the following: 80 percent would be distributed to the county and 20 percent to the enforcement agency impounding the vehicle.
- Deletes the element of knowledge and satisfaction of certain criteria establishing such knowledge for a violation of the offense of driving while a person's driver's license or driving privilege is canceled, suspended, or revoked.
- Eliminates the option to immobilize, and thereby requiring impoundment of, the vehicle of a person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, who drives a motor vehicle upon the highways of this state while the license or privilege is canceled, suspended, or revoked.

[3] *Id.*
[4] *Id.*

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 137
and insert:
Section 1. Subsection (2), paragraph (a) of subsection (4), and paragraph (d) of subsection (5) of section 849.086, Florida Statutes, are amended, and paragraphs (h) and (i) are added to subsection (7) of that section, to read:
849.086 Cardrooms authorized.—
(2) DEFINITIONS.—As used in this section:
(a) "Authorized game" means a game or series of games of bingo, poker, or dominoes which are played in a nonbanking

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manner.

(b) "Banking game" means a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers or in which the cardroom establishes a bank against which participants play.

(c) "Bingo" has the same meaning as s. 849.0931(1)(a).

(d) "Bingo card" has the same meaning as in s. 849.0931(1)(b).

(e) ~~(c)~~ "Cardroom" means a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations.

(f) ~~(d)~~ "Cardroom management company" means any individual not an employee of the cardroom operator, any proprietorship, partnership, corporation, or other entity that enters into an agreement with a cardroom operator to manage, operate, or otherwise control the daily operation of a cardroom.

(g) ~~(e)~~ "Cardroom distributor" means any business that distributes cardroom paraphernalia such as card tables, betting chips, chip holders, dominoes, dominoes tables, drop boxes, banking supplies, playing cards, card shufflers, and other associated equipment to authorized cardrooms.

(h) ~~(f)~~ "Cardroom operator" means a licensed pari-mutuel permitholder which holds a valid permit and license issued by the division pursuant to chapter 550 and which also holds a valid cardroom license issued by the division pursuant to this section which authorizes such person to operate a cardroom and to conduct authorized games in such cardroom.

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(i) ~~(g)~~ "Division" means the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation.

(j) ~~(h)~~ "Dominoes" means a game of dominoes typically played with a set of 28 flat rectangular blocks, called "bones," which are marked on one side and divided into two equal parts, with zero to six dots, called "pips," in each part. The term also includes larger sets of blocks that contain a correspondingly higher number of pips. The term also means the set of blocks used to play the game.

(k) ~~(i)~~ "Gross receipts" means the total amount of money received by a cardroom from any person for participation in authorized games.

(l) ~~(j)~~ "House" means the cardroom operator and all employees of the cardroom operator.

(m) ~~(k)~~ "Net proceeds" means the total amount of gross receipts received by a cardroom operator from cardroom operations less direct operating expenses related to cardroom operations, including labor costs, admission taxes only if a separate admission fee is charged for entry to the cardroom facility, gross receipts taxes imposed on cardroom operators by this section, the annual cardroom license fees imposed by this section on each table operated at a cardroom, and reasonable promotional costs excluding officer and director compensation, interest on capital debt, legal fees, real estate taxes, bad debts, contributions or donations, or overhead and depreciation expenses not directly related to the operation of the cardrooms.

(n) "Objects" has the same meaning as in s. 849.0931(1)(g).

(o) "Rack" has the same meaning as in s. 849.0931(1)(h).

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(p) ~~(l)~~ "Rake" means a set fee or percentage of the pot assessed by a cardroom operator for providing the services of a dealer, table, or location for playing the authorized game.

(q) "Receptacle" has the same meaning as in s. 849.0931(1)(i).

(r) ~~(m)~~ "Tournament" means a series of games that have more than one betting round involving one or more tables and where the winners or others receive a prize or cash award.

(4) AUTHORITY OF DIVISION.—The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation shall administer this section and regulate the operation of cardrooms under this section and the rules adopted pursuant thereto, and is hereby authorized to:

(a) Adopt rules, including, but not limited to: the issuance of cardroom and employee licenses for cardroom operations; the operation of authorized games; the operation of a cardroom; recordkeeping and reporting requirements; and the collection of all fees and taxes imposed by this section.

(5) LICENSE REQUIRED; APPLICATION; FEES.—No person may operate a cardroom in this state unless such person holds a valid cardroom license issued pursuant to this section.

(d) The annual cardroom license fee for each facility shall be $1,000 for each table to be operated at the cardroom. There shall be no additional fee for a cardroom to conduct bingo. Tables used exclusively for the conduct of bingo shall not be included in the facility's license fee calculation. The license fee shall be deposited by the division with the Chief Financial Officer to the credit of the Pari-mutuel Wagering Trust Fund.

(7) CONDITIONS FOR OPERATING A CARDROOM.—

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(h) A cardroom operator's conduct of bingo is conditioned upon the return of 80 percent of all proceeds from such games during the year to the players in the form of prizes and cash awards. For purposes of bingo games only, the term "gross receipts" means the total amount received by the cardroom operator for participating in the bingo game less the total amount paid to the winners or others as prizes or cash awards.

(i) Each bingo game shall be conducted in accordance with the rules of the division and the rules established in s. 849.0931(12).

Section 2. Section 3 may be cited as the "Internet Poker

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to cardrooms; amending s. 849.086, F.S.; providing for bingo games to be offered in cardrooms; revising the definition of the term "authorized game" to include bingo; defining the term "bingo," "bingo card," "objects," "rack," and "receptacle"; authorizing the division to adopt rules relating to authorized games; providing that there shall be no additional fee for the conduct of bingo; defining the term "gross receipts" for purposes of bingo games; providing that bingo games shall be conducted in accordance with certain rules; creating the

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 812
INTRODUCER:	Regulated Industries Committee and Senator Diaz de la Portilla
SUBJECT:	Internet Poker
DATE:	April 7, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Young/Harrington	Imhof	RI	**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:

The bill provides for the creation of an intrastate Internet poker network. It allows for the creation of the network through the use of up to three hub operators and provides for licensed cardroom operators to provide portals for consumers to access the Internet poker websites.

The bill also requires the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation to provide oversight of Internet poker activities. The bill sets out a licensing structure to license hub operators and cardroom affiliates. It also provides for the selection of hub operators through a competitive procurement process.

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

This bill creates the following section of the Florida Statutes: 849.087.

II. Present Situation:

Gambling is generally prohibited in Florida.[1] There are multiple exceptions to the general prohibition found in ch. 849, F.S. For example, poker is authorized to be played in Florida as a penny-ante game under s. 849.085, F.S., or in a cardroom located at a licensed pari-mutuel facility as provided in s. 849.086, F.S.

A "penny-ante game" is a game or series of games of "poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah-jongg in which the winnings of any player in a single round, hand, or game do not exceed $10 in value."[2] It must be played in a dwelling, no admission or fee may be charged, no player may be solicited by advertising, a person must be at least 18 years old to play, and any debt incurred is unenforceable.[3]

A "dwelling" is defined as a residential premise that is owned or rented by a participant in the game. It includes "the common elements or common areas of a condominium, cooperative, residential subdivision, or mobile home park of which a participant in a penny-ante game is a unit owner, or the facilities of an organization which is tax-exempt under s. 501(c)(7), of the Internal Revenue Code."[4] It also includes a college dormitory or common recreational area of the college dormitory, and a community center owned by a municipality or county.[5]

Poker may also be played in a cardroom.[6] A cardroom is a facility where authorized games are played for money or anything of value and the public is invited to participate in the games and is charged a fee by the facility operator.[7] Only licensed pari-mutuel permitholders may operate cardrooms in the state.[8] Currently, there are 23 pari-mutuel facilities operating cardrooms.

Unlawful Internet Gambling Enforcement Act of 2006
The Unlawful Internet Gambling Enforcement Act (act) does not make Internet gambling illegal. Instead the act targets financial institutions in an attempt to prevent the flow of money from an individual to an Internet gaming company because most owners and operators of such sites are located overseas, outside of the jurisdiction of the United States.

The act does not prohibit intrastate Internet gambling as long as the bet or wager is initiated or received within the state. According to the Poker Voters of America, this provision would allow Internet poker sites in Florida as long as the servers and players of Internet poker are both located within the state.[9]

Unlawful Internet gambling does not include a bet or a wager initiated and received within a single state (intrastate transactions), if such a transaction is authorized by state law and that law

[1] *See* s. 849.08, F.S.
[2] Section 849.085(2)(a), F.S.
[3] Section 849.085(3), F.S.
[4] Section 849.085(2)(b), F.S.
[5] *Id*.
[6] Section 849.086, F.S.
[7] Section 849.086(2)(c), F.S.
[8] Section 849.086(2)(f), F.S.
[9] Presentation by Melanie Brenner, Executive Director of Poker Voters of America, before the Florida Senate Committee on Regulated Industries, February 16, 2010 (presentation on file with the committee).

requires age and location verification as well as security that ensures the age and location requirements are met.[10]

Other Federal Statutory Provisions
There are other federal statutory provisions that may have an effect on the legality of Internet poker, including, but not limited to: the Wire Act of 1961; the Travel Act of 1961; the Money Laundering Control Act of 1986; the Transportation of Gambling Devices Act of 1951; the Interstate Transportation of Wagering Paraphernalia Act; and the Illegal Gambling Business Act.

These provisions, however, all seem to rely on the *interstate* aspect of these actions as well as relying on an underlying violation in order to bring charges under these provisions.

Internet Poker in other States
Intrastate Internet poker is not presently authorized in any state. New Jersey passed legislation this year that would have authorized casinos in Atlantic City to offer Internet gaming to residents of the state of New Jersey.[11] The Governor vetoed the legislation this month. Nevada, California, and Iowa are currently considering legislation to legalize intrastate Internet poker.

III. Effect of Proposed Changes:

The bill creates s. 849.087, F.S., and authorizes intrastate Internet poker in the state.

Section 1. Provides that the act may be cited as the "Internet Poker Consumer Protection and Revenue Generation Act."

Section 2. Creates the regulatory framework for the act.

Subsection (1) provides legislative intent for the creation of the act: to ensure consumer protection and generate revenue for the state through legalized intrastate Internet poker activities. The intent is to capture revenues that are otherwise flowing to offshore and unregulated Internet poker operators.

Subsection (2) provides definitions, including, but not limited to, the following:

- "Authorized game" means a game or series of games of poker, which may include tournaments, which are played in a nonbanking manner on a state Internet poker network.
- "Cardroom affiliate" means a licensed cardroom operator as defined in s. 849.086 who maintains an Internet site as a portal into a state Internet poker network.
- "Internet poker hub operator" or "poker hub operator" means a computer system operator that is licensed by the state and contracts with the state to operate a state Internet poker network.
- "Intrastate Internet poker" means authorized games of poker played over the Internet by registered players who are physically present within the borders of this state at the time of play.

[10] 31 U.S.C. s. 5362(10)(B).
[11] Senate Bill 490 by Senator Raymond J. Lesniak (D. Union, N.J.).

Subsection (3) authorizes intrastate Internet poker. Players located within the state of Florida are authorized to play intrastate Internet poker on a licensed state poker network, and licensed Internet poker hub operators are authorized to operate a state Internet poker network.

Subsection (4) provides that the Division of Pari-mutuel Wagering (division) of the Department of Business and Professional Regulation shall administer the act. The division is authorized to adopt rules for administration, licensing, operation of the technical systems for the state poker network, the security of financial information of registered players, bonuses, awards, promotions, and other incentives, as well as the distribution of poker income and the imposition and collection of all taxes and fees.

Further, the division has the power to: investigate and monitor the operation of a state Internet poker network and the playing of authorized games; review the books, accounts, and records of any current or former Internet poker hub operator or cardroom affiliate; suspend or revoke any license, after a hearing, for any violation of this section; take testimony, issue subpoenas; monitor and ensure the proper collection of taxes and fees to the state; monitor, audit, and verify the cash flow and accounting of a state Internet poker network revenue for any given operating day; and ensure that all gaming is conducted fairly and that all personal and financial information provided by registered players is protected by the Internet poker hub operator.

Subsection (5) requires Internet poker hub operators to be licensed prior to operating an Internet poker network within this state. Any application must be completed on forms provided by the division and the application must contain all of the information the division determines by rule, is needed to determine the person's eligibility for the license. An applicant must provide all documentation required in a timely fashion and the documentation must be appropriate, current, and accurate. The Internet poker hub operator is required to notify the division anytime there is any change in ownership of the applicant or licensee of five percent or more for division approval. Further, any applicant for a hub operator license and each licensee must comply with the fee requirements in the act.

Subsection (6) requires the division to select no more than three Internet poker hub operators through a competitive procurement process. The applicants must demonstrate the ability to ensure that intrastate Internet poker is offered only to register players who are at least 18 years of age and are present within the borders of the state at the time of play. Further, the division must review the liquidity of the state Internet poker network annually to determine if additional hub operator licenses should be granted; however, no more than three licenses may be granted at any time.

Subsection (7) provides minimum qualifications for an Internet poker hub operator:

- The entity must be authorized to conduct business in the state.
- The applicant must not have accepted any wager of money or other consideration on any online gambling activity from any Florida resident since October 13, 2006.
- The executives and key employees must meet the requirements to obtain intrastate Internet poker occupational licenses from the division.

- The applicant must have existing and established experience with Internet gaming, or be licensed to conduct Internet gaming activities, in one or more jurisdiction anywhere in the world where Internet gaming is legal and regulated.
- The applicant and any entity with an ownership interest in the applicant must have demonstrated compliance with all federal and state laws in the jurisdictions where they provide services.
- The applicant must provide all necessary documentation and information relating to all subcontractors of the applicant.
- The applicant must have provided a description of how it will facilitate compliance with all of the standards set forth in the section, including, but not limited to:
  - Registered player processes and requirements relating to intrastate play, age verification, and exclusion of problem gamblers.
  - Network system requirements.
  - Gaming systems.
  - Ongoing auditing by the division and accounting systems.
- The applicant must have provided all other documentation or information that the division, by rule, has determined is necessary to ensure that the applicant is legally, technically, and financially qualified to enter into a contract to become the state's Internet poker hub operator.

Subsection (8) provides application requirements for an Internet poker hub operator. An applicant must:

- Provide documentation establishing that the applicant is authorized to do business in the state, financial information, and any other document necessary to prove that the applicant is financially qualified to perform its obligations as an Internet poker hub operator.
- Provide information about any subcontractors of the applicant.
- Provide documentation establishing how the applicant will comply with the provisions in the act, including how the applicant will verify age, only allow intrastate play, and ensure that the games are legal, independent, and fair.
- Pay all fees required in the act upon initial application to the division.

Subsection (9) requires that the Internet poker hub operator be financially and otherwise responsible for the operation of the state Internet poker network. To ensure the Internet poker hub operator's financial ability to be responsible, the licensee must provide evidence of a surety bond in the amount of $1 million, payable to the state for each year that the licensee is licensed to be an Internet poker hub operator. The bond shall be issued by a surety or sureties licensed to do business in the state, and the bond shall guarantee that an Internet poker hub operator fulfills all financial requirements of the contract. The bond will be kept in full force and effect by an Internet poker hub operator for the term of the license.

Subsection (10) provides contractual obligations of an Internet poker hub operator. A licensee must not only comply with this section but also with all terms of the contract between the entity and the state. The contract between the division and the Internet poker hub operator shall constitute the contract between the parties and govern the interpretation of their relationship. The contract is for a five year term and at the end of that term may be renewed for a period equal to

the original contract if both parties agree. The contract may be amended by a mutual written agreement of the parties.

Further, opportunities are provided for the hub operator to terminate the contract. First, if this section is amended, the Internet poker hub operator is given the power to declare the contract null and void within 90 days after the effective date of the amendment and the Internet hub operator must provide at least 60 days prior written notice of the intent to declare the contract null and void, otherwise, the Internet poker hub operator agrees to be bound by the amendments to this section. Second, in the event that a change in federal law renders the provision of intrastate Internet poker illegal, an Internet poker hub operator or the division may abandon the contract after providing the other party with 90 days prior written notice of their intent to do so.

Further, if there is a dispute over the contract, either party may take the issue to an administrative law or circuit court for an initial interpretation of the contract and the rights and responsibilities in the contract. It is unclear in what forum the dispute is to be filed.

Subsection (11) requires that a cardroom affiliate be licensed prior to operating a portal. In order to be eligible for a license, the cardroom affiliate applicant must be licensed under s. 849.086, F.S., actively operate a cardroom with a minimum of 10 licensed tables, and comply with all the requirements of s. 849.086, F.S. Prior to operating the portal, the cardroom affiliate licensee must enter a contractual relationship with one of the Internet hub operators and must file a copy of the contract with the division.

Once a license is issued, renewal of the license is to be made in conjunction with the applicant's annual application for its cardroom and pari-mutuel licenses. The application for a cardroom affiliate license must contain all of the information required by rule, by the division.

In order for a cardroom affiliate to be eligible for license renewal, they must have an active portal and must have contributed at least one percent of the total revenue generated from the play of intrastate Internet poker from the hub with which the cardroom affiliate has a contract on file at the division.

The cardroom affiliate must pay an annual licensure fee of $1,000. The division is authorized to adopt rules regarding cardroom affiliate licenses and renewals.

Subsection (12) requires any person employed by an Internet poker hub operator or a cardroom affiliate in any capacity related to intrastate Internet poker to be licensed by the division. An Internet poker hub operator or a cardroom affiliate is prohibited from contracting with or doing business with any business unless they hold an occupational license issued by the division. The division shall, by rule, institute a schedule for applications of such licenses, the application forms required, and the rules regarding licenses and renewal. The license is valid for three years once the full fee is paid to the division. The division is to determine the amount of the license fee by rule, but the employee fee is not to exceed $50 and the business fee is not to exceed $1,000. If the required fee is not paid, disciplinary action may be taken by the division against the Internet poker hub operator or the cardroom affiliate. Current cardroom licensees do not have to pay the fee.

Subsection (13) provides that the division may deny, revoke, suspend, place conditions or restrictions on, the license of any person or entity who meets any of the following criteria:

- Been refused a license in any other state by the governmental body having jurisdiction.
- Been under suspension or has any unpaid fines in any other state or jurisdiction.
- Violated this section or any of the rules of the division governing conduct of persons holding such licenses.
- Been convicted of a capital felony or any other felony, in this state or any other jurisdiction, involving:
  - Arson.
  - Any offense involving a controlled substance.
  - Any crime involving a lack of good moral character.
- Had a license revoked by this state or any other jurisdiction for any gaming related offense.
- Been convicted of a felony or misdemeanor, in this state or any other state, or under the laws of the United States, related to gambling or bookmaking.

Subsection (14) provides that all employees of the Internet poker hub operator or cardroom affiliate must submit fingerprints for a criminal history check. The person whose record is being checked is also required to pay the costs of the investigation. The fingerprints will be kept on the statewide database and shall be forwarded to the Federal Bureau of Investigation.

Subsection (15) requires the Internet poker hub operator to provide the division with a description of any game of poker and the betting rules it proposes to offer to registered players and all documentation relating to development and testing of the game's software. Once they have provided this information, the Internet poker hub operator is authorized to begin offering the game and if the division does not object to the game within 30 days of receipt of the information, the game will be considered authorized and the hub may continue to operate the game. All games are required to be operated strictly, within the game and betting rules. In order to ensure that all games are run fairly, the Internet poker hub operator must provide the following information through the game display:

- The name of the game.
- Any restrictions on play.
- The rule of the game.
- All instructions on play of the game.
- The unit and total of bets permitted.
- The player's current account balance, which must be shown in real time.
- Any other information that the Internet hub operator determines is necessary for the registered player to have in real time to compete fairly in the proposed or authorized game.

Further, the Internet poker hub operator must institute controls and technology to ensure the ability to minimize fraud or cheating through collusion. The hub operator must also take steps to stop such activities and inform the division once they are made aware of the existence of the cheating or fraud. The hub operator is required to investigate any such complaints made, and submit a report to the division within 24 hours of the complaint and continue to update the division every 24 hours until the investigation is complete. A registered player is not permitted to

bring an action for damages against a hub operator for attempting to prevent fraud or cheating if the hub operator can demonstrate that it acted to prevent such actions as soon as they became aware of them. Finally, if the software does not allow the completion of the game, the hand is to be voided and all funds related to the game shall be returned to the registered player's account.

Subsection (16) provides requirements for registered players:

- All registered players must be located within this state at the time of play of intrastate Internet poker.
- A person who has not reached 18 years of age may not be a registered player or play intrastate Internet poker.
- All Internet poker hub operators and cardroom affiliates shall exclude from play any person who has submitted a completed Internet Poker Self-Exclusion Form.

When an Internet poker hub operator receives a Self-Exclusion Form, the operator or cardroom affiliate shall immediately provide a copy of the form to each Internet poker hub operator, each cardroom affiliate and the division. Further, a person may not bring an action for negligence or any other claim against a hub operator or cardroom affiliate if they have filled out a Self-Exclusion Form and they gain access and play despite the request to be excluded. Each hub operator and cardroom affiliate must prominently display a link to the responsible gaming organization that is under contract with the division under ch. 551, F.S.

Subsection (17) requires the Internet hub operator to register players and to establish accounts for those players. A person may not play unless they have registered an account with the Internet poker hub operator. In order to establish an account a person must provide:

- First name and surname.
- Principle residence address.
- Telephone number.
- Social security number.
- Legal identification or certification to prove that the person is at least 18 years of age.
- Valid email address.
- And the source of funds to be used to establish the account after the registration process is complete.

The Internet poker hub operator is not allowed to release the personal information of a registered player to non-government third parties except for subcontractors. A governmental agency may release such information if they have received a court order to subpoena the information. The hub operator must require the player to agree to their terms of use. The hub operator is also given the ability to revoke or suspend the account of a registered player if the player has participated in illegal activity on a state Internet poker network. The Internet poker hub operator is prohibited from extending credit to any registered player, and the operator must provide the registered player with the opportunity to set their own options, such as limiting the amount of deposit entered in one day, limit on the amount of losses that can incur in a period of time, set a limit on the amount of time that may be spent playing, or other such personal controls.

Subsection (18) requires an Internet poker hub operator to keep a book of registered player accounts, regularly audit the accounts, and make all financial information available to the division upon request. These reports must include:

- Monthly auditable and aggregate financial statements.
- Calculation of all fees payable to the government.
- Identity of all players.
- The balance of the player's account at the start of the session of play.
- The wagers placed on each game, time stamped by the game server.
- The result of each game, time stamped by the game server.
- The amount won or lost by the player.
- The balance on the player's account at the end of each game.

The players' accounts must be reconciled on a monthly basis.

Subsection (19) requires an Internet poker hub operator to establish a physical site in the state to house the server and all technical components and equipment necessary for the conduct of intrastate Internet poker. In addition, managerial employees of the hub operator who manage the day-to-day operations of the intrastate Internet poker network must reside in the state.

The Internet poker hub operators must utilize technical systems that materially aid the division in fulfilling its regulatory, consumer protection, and revenue-raising functions and allow the division unrestricted access to and the right to inspect the technical systems. The Internet poker hub operator is further required to ensure that the system is protected from tampering or manipulation and document all procedures for how the system and the games operate.

Subsection (20) authorizes the Internet poker hub operator to charge a fee for the playing of games or tournaments. Those fees may be handled in any of the following ways:

- Per hand charge.
- Flat fee.
- Hourly rate.
- A rake subject to the posted maximum amount, but not based on the amount won by players.

The fee must be posted on the screen prior to the start of the game.

Subsection (21) requires that an entity acquire a valid intrastate Internet poker business occupational license, issued by the division, in order to partner with an Internet poker hub operator or a cardroom affiliate. Any employee of the division is prohibited from being an officer, director, owner, or employee of any person or entity issued a license by the division or from having any interest in or do business with such a person or entity. Employees of the division or relatives living in the household of the employee are prohibited from playing on the network at any time.

Subsection (22) provides that it is illegal to play Internet poker in the state of Florida, unless such play complies with the laws of this state. Any person who assists in making or allows to be made

a false statement on any document required under this section is subject to an administrative fine of up to $10,000. Also, any person who manipulates, or attempts to manipulate the outcome, payoff, or operation of the play of intrastate Internet poker commits a third degree felony.[12]

Subsection (23) provides fees for the regulation of Internet poker activity:

- Upon application, each Internet poker hub operator applicant must submit $25,000 to compensate the division for an investigation of the applicant.
- Upon application, and annually thereafter, each Internet poker hub operator is required to pay a nonrefundable $500,000 license fee.
- Upon application, and annually thereafter, each cardroom affiliate is required to pay a nonrefundable license fee of $1,000.

Subsection (24) requires the Internet poker hub operator to pay the division a nonrefundable $10 million and provides that this payment shall be considered an advance on the taxes to be paid to the state. The Internet hub operator shall be credited this money against gross receipts monthly until the amount is recouped by the Internet hub operator.

Subsection (25) provides that the Internet poker hub operator pay the state a tax of 10 percent of the operator's monthly gross receipts derived from play. These payments shall be made on the fifth day of each calendar month and be deposited into the Pari-mutuel Wagering Trust Fund. Any licensee who fails to make the required tax payment is subject to an administrative fine of up to $10,000 for each day that the required payment is late.

Subsection (26) provides a distribution calculation for the income derived from the play of internet poker. The 90 percent remaining after the 10 percent tax has been paid to the state, shall be divided in the following way:

- Seventy percent of the remaining money is to be distributed to the cardroom affiliates:
  - Fifty percent shall be divided and distributed based on the affiliates' total rake from the previous fiscal year divided by the total previous year's rake as determined by the division.
  - Fifty percent shall be divided and distributed based on the amount wagered for the previous month through the cardroom affiliates portal as determined by the division, divided by the total amount wagered through all the cardroom affiliate's portals.
  - If two or more cardroom affiliates join together to operate a portal, their wagers and rake shall be combined.
  - Each license holder that receives payment under this subsection is required to use at least 4 percent of its monthly gross receipts from Internet poker to supplement pari-mutuel purses or prize money during the current meet or the next ensuing meet.
- Twenty-five percent of the remaining money shall be retained by the Internet hub operator to pay all costs of operations.
- Four percent of the remaining money shall be retained by the Internet poker hub operator to fund statewide advertising, marketing, and promotion of play.

[12] A third degree felony is punishable by up to 5 years in state prison and a fine up to $5,000 may also be imposed.

- One percent is to be used to fund services related to the prevention and treatment of problem gambling by the entity that is under contract with the division to perform such duties.

Further, these distributions are to be made by the twentieth day of each calendar month and the division is to ensure that all distributions are made in accordance with this section.

Subsection (27) authorizes the division to revoke, suspend, or deny a license to an Internet poker hub operator or cardroom affiliate who has violated this act or any of the rules adopted by the division. Further, if a cardroom affiliates' pari-mutuel permit or license is suspended or revoked pursuant to ch. 550, F.S., or it's cardroom operator's license is suspended or revoked pursuant to s. 849.086, F.S., the division must also revoke or suspend the cardroom affiliate license.

Subsection (28) provides that the division may impose an administrative fine not to exceed $10,000 for any person violating this section. In addition, the division may suspend or revoke a cardroom affiliate license or Internet poker hub operator license for any willful violation of this act. The division also has the discretion to invoke an administrative fine not to exceed $100,000 for a willful violation.

Subsection (29) provides the division with rulemaking authority for the act.

Subsection (30) declares that the Legislature has the exclusive authority over the conduct of intrastate Internet poker and that only the division and other authorized state agencies shall administer this act.

Section 3. Provides that the act shall take effect on 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:

The bill provides an annual license fee of $500,000 and an initial payment of $10 million to be credited against the 10 percent gross receipts tax for the hub operators. The cardroom affiliates are required to pay a $1,000 license fee per year. The occupational

license fee is $50 for new employees of the poker hub or cardroom affiliate. Nonemployees supplying goods and services must pay a license fee of $1,000 annually.

B. Private Sector Impact:

Based on the tax revenue estimates, it is believed that intrastate Internet poker would have a positive effect on the pari-mutuel industry through increased purse amounts and additional revenues generated as a result of becoming a licensed cardroom affiliate.

All employees of the Internet poker hub operator or cardroom affiliate must submit fingerprints for a criminal history check. The person whose record is being checked is also required to pay the costs of the investigation.

C. Government Sector Impact:

The Revenue Estimating Conference met on February 4, 2011, and discussed the House companion bill, HB 77. Pertinent to tax revenue, they estimate that HB 77 would raise $10.5 million in FY 2011-2012, nothing for FY 2012-2013, $4.7 million in FY 2013-2014, and then $7.2 million in FY 2014-2015.

The Department of Business and Professional Regulation estimates that if enacted, the legislation could provide $10,585,000 in revenue to the state in FY 2011-2012. This revenue will be in the form of license fees, application fees, and net taxes paid. In FY 2012-2013 the estimated revenue is expected to drop to $560,000, which will be based on license fees. This drop is a result of the $10,000,000 in taxes that the hub operators are required to pay up front and then not required to pay taxes until the amount exceeds the $10,000,000 already paid. Then in FY 2013-2014, the revenue to the state is expected to be $6,460,000.

The net revenue to the state, after the costs of regulation, administration, and new personnel is subtracted is estimated to be $9,363,702 for FY 2011-2012, $375,600 for FY 2012-2013, and $5,803,600 for FY 2013-2014.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not indicate whether a hub operator may decline to partner with a cardroom affiliate or whether a cardroom affiliate may partner with more than one hub operator.

The legalization of Internet poker in Florida may affect the state's compact with the Seminole Indian Tribe of Florida (tribe). The tribe would not be required to make the Minimum Guaranteed Payments[13] if the state affirmatively allows Internet or online gaming and the Tribe's

[13] The payments are $150 million for the first two years of the compact, $233 million for the next two years, and $234 million for the last year for a total of $1 billion. *See* Parts III.L and III.M of the compact.

net win for all of its gaming facilities combined drops more than 5 percent below its Net Win for the previous 12 months.[14] However, the Tribe would still be required to make payments based on the Percentage Revenue Share Amount,[15] which is a graduated scale that ranges from 12 percent of Net Win up to $2 billion and 25 percent of Net Win greater than $4.5 billion.[16]

The Minimum Guaranteed Payments would be reinstated for any subsequent Revenue Sharing Cycle if the Net Win rises above the amount of the 5 percent reduction. There would be no reduction if the decline in the Net Win were due to an Act of God, war, terrorism, fire, flood, or accidents that damage the Tribe's facilities. There would also not be a reduction if the Tribe offered Internet or online gaming as authorized by law.[17]

Revenue sharing with the Seminole Indian Compact relies on continued exclusivity of casino style and Class III gaming. Although the legalization of intrastate Internet poker may constitute an expansion of gaming, the Compact provides that payments will not be reduced or cease unless the Tribe's net win falls more than 5 percent after Internet gaming begins. Even if the Tribe's net win decreases by more than 5 percent, the Tribe will continue to revenue share with the state, except the Tribe will make payments based on the Percentage Revenue Share Amount instead of the Minimum Guaranteed Payment amounts.

Because we are still in the first year of the contract, there is insufficient data to indicate whether the state will suffer a reduction in payments if the Tribe switches and begins making payments based on the Percentage Revenue Share Amount. Some reports have indicated that the Tribe is grossing $2 billion in annual revenues; if those figures are correct, the Tribe would be making approximately $240 million per year in payments based on a 12 percent revenue share payment, which is higher than the current $150 million Guaranteed Payment.

In addition, if the Tribe conducts Internet gaming, the Tribe must continue to make payments under the Guaranteed Minimum Payment structure. Because of the uncertainty of whether the Tribe will begin Internet gaming and whether the Tribe will experience any decrease in Net Win, it is not possible to predict if the state will experience a decrease in revenue sharing payments.

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 Regulated Industries on March 16, 2011:
The CS makes technical changes to the bill to correct the name of the Unlawful Internet Gambling Act, to delete duplicative information in the bill, to reorder subsections, and to remove references to subcontractors. The CS removes criteria for licensed Internet poker hub operators that required the operator to have experience in the United States in a licensed gaming activity. The CS requires Internet poker hub operators to maintain an instate premise for the operation of the hub. The CS removes the limitation of only 3

[14] Part XI.B.3., *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida,* July 6, 2010.
[15] *Id.*
[16] *See* Part XI.B.1.(b) of the compact for the complete percentage payment schedule.
[17] *Supra* at n. 2.

registered poker player accounts per person. In addition, the CS provides that a cardroom affiliate must contract with an Internet poker hub operator prior to operating a portal.

B. Amendments:

None.

806600

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete line 14
and insert:
(5) TEMPORARY 911 PUBLIC SAFETY TELECOMMUNICATORS; EXCEPTION.—

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 890
INTRODUCER:	Community Affairs Committee and Senator Dean
SUBJECT:	Public Safety Telecommunicators
DATE:	April 6, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wood	Yeatman	CA	**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:

The bill authorizes public safety agencies to use sworn law enforcement officers as temporary 911 public safety telecommunicators. The bill requires such officers to complete a supplementary training program within 12 months after first serving as a temporary public safety telecommunicator.

This bill substantially amends section 401.465, Florida Statutes.

II. Present Situation:

Public safety telecommunicators, also known as 911 operators or emergency dispatchers, are often the initial point of contact for the public when emergency assistance is required. Emergency dispatchers receive emergency calls from the public requesting police, fire, medical or other emergency services. These personnel then determine the nature, location, and priority of the emergency, and communicate this information to police, fire, ambulance, or other emergency units as necessary and in accordance with established procedures. Emergency dispatchers receive and process 911 emergency calls, maintain contact with all units on assignment, and maintain status and location of police, fire, and other emergency units, as necessary. Emergency

dispatchers may be trained to enter, update, and retrieve information from a variety of computer systems to assist callers. If equipped, they may also use Emergency Medical Dispatch (EMD), a program that tells them how to help people treat themselves over the phone, while sending the appropriate EMS or fire units to the scene.

Section 365.171, F.S., governs Florida's public policy on the emergency telephone number "911." This statute specifies that it is the intent of the Legislature to "establish and implement a cohesive statewide emergency telephone number '911' plan which will provide citizens with rapid direct access to public safety agencies by dialing the telephone number '911' with the objective of reducing response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services."

All 67 Florida counties have enhanced 911 (E911) equipment, which allows an emergency dispatch center's computers to automatically provide the caller's name, address, and mapped location. The map also identifies the closest police, fire, and emergency medical services (EMS) agencies. The state E911 board is working to move towards Next Generation 911 (NG911) equipment which includes video and data transmission capability.[1]

There are 258 Public Safety Answering Points (PSAPs) statewide, with each county having between one and forty of these. There is no standard procedure defining which local agency operates these call centers, but many are operated by Sheriff's Offices, Police Departments, Fire Rescue, or a variety of local administrative agencies.[2]

Department of Education Curriculum Framework and Standards

The Division of Workforce Education at the Department of Education publishes curriculum frameworks and standards for both Public Safety Telecommunication and Law Enforcement.

The Public Safety Telecommunication framework is designed to prepare students for employment as police, fire, and ambulance dispatchers. The intended outcomes for the Public Safety Telecommunication course include the ability of the dispatcher to do all of the following:

- Describe and demonstrate professional ethics and the role of telecommunicator.
- Describe Guidelines and Operational Standards of call classification and prioritization.
- Identify and explain communication equipment and resources.
- Demonstrate communication and interpersonal skills.
- Perform operational skills.
- Demonstrate understanding of fire department role and responses as well as hazardous materials awareness.
- Demonstrate understanding of emergency medical services role and responses.
- Demonstrate understanding of law enforcement role and responses.
- Understand the duties of a public safety telecommunicator.

[1] State of Florida E911 Board 2010 Annual Report, *available at* http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911/e911_board (last visited Mar. 30, 2011).
[2] David Gulliver, Ed., *Florida 911: The State of Emergency*, Gulf Coast Community Foundation of Venice, http://www.al911.org/sites/default/files/Florida-911-Report.pdf (last visited Mar. 30, 2011).

- Comprehend stress management techniques.
- Demonstrate an understanding of Emergency Management practices.
- Demonstrate CPR proficiency.[3]

The Public Safety Telecommunication program curriculum is currently taught at various community colleges and vocational/technical centers across the state. Thirty public safety agencies have been certified to teach the curriculum since 2008, including twenty-two local law enforcement agencies.[4]

The Florida DOE curriculum framework for Law Enforcement Officers includes its own set of intended outcomes, overlapping with seven of the twelve Public Safety Telecommunication outcomes. The five Public Safety Telecommunication outcomes which are not covered by the Law Enforcement Officer curriculum are the first three, relating to the role of telecommunicator, call classification and prioritization, and E911 equipment; the fifth, relating to operational skills; and the tenth, relating to understanding the duties of a public safety telecommunicator. No specific, formal public safety telecommunication training is presently known to be provided to law enforcement officers.[5]

Although the total number of 911 call center staff statewide cannot be identified, it was estimated in 2010 that the state's 235 call centers employ 6,000 staff. [6] The Gulf Coast Community Foundation of Venice had previously commissioned an independent consultant in 2009 to analyze Florida's 911 system, and found 5,498 staff in 258 public safety answering points. That report cited Liberty County as an example of a need for more staff in public safety answering points; only one call-taker is available to take calls at any time of day, with the responsibility of answering four lines. They also found a difficulty statewide in maintaining personnel long-term because of the stress and low pay associated with the work, leading to high turnover and a lack of experienced personnel.[7]

Section 401.465, F.S.

The Florida Legislature made several changes to this section in 2010,[8] including introducing the term "public safety telecommunicator" to replace "911 emergency dispatcher" throughout Florida law and introducing a definition for "public safety telecommunication training program" which includes any program certified by the Department of Health to meet the curriculum framework established by the Department of Education, which must be a minimum of 232 hours of training.

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[3] *See* Florida Department of Education, "Curriculum Framework, Public Safety Telecommunication," July 2010, http://www.fldoe.org/workforce/dwdframe/law_cluster_frame10.asp (last visited Mar. 31, 2011).
[4] Florida Department of Health "911 Public Safety Telecommunicator Program: Overview", *available at* http://www.doh.state.fl.us/DEMO/EMS/dispatchers.html (last visited Mar. 31, 2011).
[5] *See* Florida Department of Education, "Curriculum Framework, Law Enforcement Officer," July 2010, http://www.fldoe.org/workforce/dwdframe/law_cluster_frame10.asp (last visited Mar. 31, 2011).
[6] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, Report No. 10-12, (Jan. 2010) http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-12 (last visited Mar. 31, 2011).
[7] David Gulliver, Ed., *Florida 911: The State of Emergency*, Gulf Coast Community Foundation of Venice, http://www.al911.org/sites/default/files/Florida-911-Report.pdf (last visited Mar. 31, 2011).
[8] Section 3, ch. 2010-188, L.O.F.

The most significant change to this section in 2010 was the transition of certification from a voluntary to a mandatory procedure. Effective October 1, 2012, all public safety telecommunicators must be certified by the DOH if they are employed at an "answering point," defined as a "public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to the calls"[9] unless they are enrolled in a training program and have been employed less than 12 months.

Also effective October 1, 2012, all public safety telecommunicators will be required to pass an exam administered by the DOH in order to receive certification; an alternative process for initial certification of public safety telecommunicators already employed as such for 3 years since January 1, 2002, will expire on the same date.

The requirements for the mandatory certification of 911 public safety telecommunicators may be temporarily waived by the DOH in a geographic area of Florida where a state of emergency has been declared by the Governor.

Section 401.465(2)(j), F.S., includes a requirement that persons "employed as a 911 public safety telecommunicator, a sworn state-certified law enforcement officer, or a state-certified firefighter before April 1, 2012," pass the examination, at which point completion of the training program would be waived and they would be certified.

In a 2010 Advisory Legal Opinion, Florida Attorney General Bill McCollum addressed a question posed by Springfield, FL, Chief of Police as to whether the law now required "all law enforcement officers who are likely to work in the city's dispatch center and serve as a call-taker and dispatcher of 911 calls to be trained and certified?" The Attorney General clarified that certification is the only requirement. Currently law enforcement officers employed prior to April 1, 2012, are only required to pass the exam in order to be certified. McCollum stated, "it is my opinion that pursuant to section 401.465(2)(a), Florida Statutes, any public agency employee whose duties and responsibilities include answering, receiving, transferring, and dispatching functions related to 911 calls or supervising or serving as the command officer to a person or persons having these duties and responsibilities at a public safety answering point is required to be certified by the Department of Health by October 1, 2012."[10]

Newly employed sworn state-certified law enforcement officers who begin their employment on or after April 1, 2012, will be required to be certified by both taking a training course and passing the exam.

III. Effect of Proposed Changes:

Section 1 authorizes public safety agencies to use sworn law enforcement officers as temporary 911 public safety telecommunicators. The section also requires officers who work as a temporary 911 public safety telecommunicator to successfully complete a supplementary training program for temporary 911 public safety telecommunicators. This supplementary program would be

[9] Section 365.172(3)(a), F.S.
[10] Op. Atty Gen. Fla. 10-27 (2010).

distributed by the Criminal Justice Standards and Training Commission and would provide a maximum of 40 hours of training.

Section 2 provides that the bill takes effect on 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 bill may reduce the cost for local governments who use sworn state-certified law enforcement officers in their answering points. The number of the estimated 6,000 call-takers and dispatchers currently employed statewide who would qualify is unknown.[11] The Department of Highway Safety and Motor Vehicles states: "This bill will have a positive future fiscal impact for state and local governments by eliminating the costs of certification for sworn state-certified law enforcement officers that would have been required beginning October 1, 2012."[12] There are 50,936 sworn state-certified law enforcement officers in Florida; the Florida Department of Law Enforcement employs 418 of these, and eight of those are employed as public safety telecommunicators.[13]

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[11] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, Report No. 10-12, (Jan. 2010) http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-12 (last visited Mar. 31, 2011).

[12] Department of Highway Safety and Motor Vehicles, *Senate Bill 890 Agency Bill Analysis* (Feb. 11, 2011) (on file with the Senate Committee on Community Affairs).

[13] E-mail from Rachel Truxell, Government Analyst II, Florida Department of Law Enforcement, to Galen Wood, Intern, Florida Senate (Mar. 3, 2011) (on file with the Senate Committee on Community Affairs).

An unknown number of local governments use sworn law enforcement officers to supplement or substitute for permanent public safety telecommunicators.

VI. Technical Deficiencies:

Line 14: The title of subsection 401.465(5) currently reads "temporary public safety communicators." Throughout the section, the term used is "telecommunicators" rather than "communicators."[14]

Lines 14, 17, 18, 20: The term "temporary public safety telecommunicators" is used without a definition being provided. Without a definition, it is unclear what is meant by "temporary" and under what circumstances officers would qualify. Some local law enforcement agencies reportedly assign officers to fill in certain shifts on a weekly basis. When a court must determine the meaning of a term used but undefined in a statute, "resort may be had to case law or related statutory provisions which define the term, and where a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense."[15]

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 Community Affairs on March 28, 2011:
The committee substitute completely replaces the original language exempting law enforcement officers from certification. The new language provides an exception for law enforcement officers serving as temporary public safety telecommunicators, and requires that they complete a shorter, alternative training program within 12 months after first serving as such.

B. Amendments:

None.

[14] A section heading or caption has no legal significance. *Agner v. Smith*, 167 So.2d 86 (Fla. 1st DCA 1964), *cert. dismissed*, 172 So.2d 598 (Fla.1965). By implication, a subsection heading or caption should not have any legal significance.
[15] *State v. Hagan*, 387 So.2d 943, 945 (Fla.1980) (citations omitted).

827170

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete lines 76 - 83
and insert:
(c) This subsection does not apply to the purchase, trade, or transfer of rifles or shotguns by a resident of this state when the resident makes such purchase, trade, or transfer from a licensed importer, licensed manufacturer, or licensed dealer in another state.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

827170

Delete lines 6 - 8

and insert:

place in another state; repealing s. 790.28, F.S., relating to

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 956
INTRODUCER:	Senator Hays
SUBJECT:	Firearms Transactions
DATE:	April 7, 2011
REVISED:	

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

I. Summary:

Senate Bill 956 amends Florida law regarding the purchase, trade, or transfer of firearms by Florida residents which occur in other states. By repealing s. 790.28, F.S., the bill eliminates the restriction on Florida residents only being able to purchase shotguns and rifles in contiguous states. The bill's amendment to s. 790.065, F.S., clarifies that a purchase, trade, or transfer of a firearm in another state by a Florida resident is governed by the laws of that state and the federal laws regarding such transactions.

This bill substantially amends section 790.065 and repeals section 790.28 of the Florida Statutes.

II. Present Situation:

Under the provisions of the Federal Gun Control Act (GCA),[1] anyone purchasing a firearm from a licensed dealer or redeeming a pawned firearm must first undergo a background check through either the FBI or the state in which the purchase is being made.

Federal GCA Requirements and NICS

The 1968 GCA required that a National Instant Criminal Background Check System (NICS) be established in November 1998, for the purpose of checking available records on persons who may be disqualified from purchasing firearms. The federal Act prohibits transfer of a firearm to a person who:

[1] 18 U.S.C. 922.

- is under indictment for, or has been convicted of, a crime punishable by imprisonment for more than one year,
- is a fugitive from justice,
- is an unlawful user of, or is addicted to, any controlled substance,
- has been adjudicated as mentally defective or committed to a mental institution,
- is an illegal alien or has been admitted to the United States under a nonimmigrant visa,
- was discharged from the U.S. Armed Forces under dishonorable conditions,
- has renounced U.S. citizenship,
- is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child, or
- has been convicted in any court of a misdemeanor crime of domestic violence.[2]

The Act also prohibits transfers of long guns to persons under 18 and most transfers of handguns to persons under 21 years of age.[3] The restrictions listed above are the minimum restrictions adopted in most states, although many states have enacted additional prohibiting factors.[4]

Florida Residents Purchasing Shotguns and Rifles in Other States

Among the provisions in the GCA was a section that made it unlawful for a licensed importer, manufacturer, dealer, or collector[5] to sell or deliver any firearm[6] to any person who the licensee knew or had reasonable cause to believe did not reside in the state in which the licensee's place of business was located.[7] The GCA specified that this prohibition did not apply to the sale or delivery of a rifle[8] or shotgun[9] to a resident of a state *contiguous* to the state in which the licensee's place of business was located if:

- The purchaser's state of residence permitted such sale or delivery by law;
- The sale fully complied with the legal conditions of sale in both such contiguous states; and

[2] 18 U.S.C. 922(d)
[3] 18 U.S.C. 922(b)(1).
[4] *Background Checks for Firearm Transfers, 2002*, Department of Justice Report, September 2003.
[5] The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution. The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution. The term "dealer" means any person engaged in the business of selling firearms at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker. The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define. To be "licensed," an entity listed above must be licensed under the provisions of 18 U.S.C. Ch. 44. *See* 18.U.S.C. § 921.
[6] 18 U.S.C. § 921 defines the term "firearm" as any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device. Such term does not include an antique firearm.
[7] 18 U.S.C. § 922(b)(3) (1968).
[8] 18 U.S.C. § 921 defines the term "rifle" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.
[9] 18 U.S.C. § 921 defines the term "shotgun" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shots or a single projectile for each single pull of the trigger.

- The purchaser and the licensee had, prior to the sale of the rifle or shotgun, complied with federal requirements applicable to intrastate firearm transactions that took place at a location other than at the licensee's premises.[10]

Subsequent to the enactment of the GCA, several states, including Florida, enacted statutes that mirrored the GCA's provisions that allowed a licensee to sell a rifle or a shotgun to a resident of a state contiguous to the state in which the licensee's place of business was located. Florida's statute, s. 790.28, F.S., entitled "Purchase of rifles and shotguns in contiguous states," was enacted in 1979, and currently provides the following:

> A resident of this state may purchase a rifle or shotgun in any state contiguous to this state if he or she conforms to applicable laws and regulations of the United States, of the state where the purchase is made, and of this state.

In 1986, the Firearm Owners' Protection Act (FOPA) was enacted.[11] FOPA amended the GCA's "contiguous state" requirement to allow licensees to sell or deliver a rifle or shotgun to a resident of any state (not just contiguous states) if:

- The transferee meets in person with the transferor to accomplish the transfer; and
- The sale, delivery, and receipt fully comply with the legal conditions of sale in both such states.[12]

Subsequent to the enactment of FOPA, many states revised or repealed their statutes that imposed a "contiguous state" requirement on the interstate purchase of rifles and shotguns. [13] Florida has not revised or repealed its statute.

It should be noted federally-licensed firearms dealers, importers and manufacturers are required by the federal government to collect and submit identifying information from prospective firearm purchasers to the National Instant Criminal Background Check System before transferring the firearm.

III. Effect of Proposed Changes:

Section 790.28, F.S., is repealed by the bill. It is the provision that limits Florida residents to the purchase of rifles and shotguns in contiguous states. A paragraph is added by the bill to s. 790.065, F.S., in order to clarify that a Florida resident's firearm purchase, trade, or transfer in another state is subject only to the federal law and the law of the state wherein the transfer is made. A NICS check is required by the bill prior to the transaction.

[10] 18 U.S.C. § 922(b)(3) (1968).
[11] Pub. L. No. 99-308.
[12] 18 U.S.C. §922(b)(3) (1986).
[13] *See, e.g.,* O.C.G.A. § 10-1-100 (2011), specifying that residents of the state of Georgia may purchase rifles and shotguns in any state of the United States, provided such residents conform to applicable provisions of statutes and regulations of the United States, of the state of Georgia, and of the state in which the purchase is made.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

598956

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete lines 68 - 72
and insert:

chapter 490. The expert

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 1088
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senators Altman and Detert
SUBJECT:	Criminal Conduct
DATE:	April 5, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	**Fav/CS**
2.	Dugger	Cannon	CJ	**Pre-Meeting**
3.			JU	
4.			BC	
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:

The bill changes the organizational structure of s. 827.03, F.S., the criminal child abuse statute, by creating a definition section, followed by an offenses section that describes the conduct proscribed by the statute and the applicable penalties.

Substantively, the bill adds a definition of "mental injury" to mean "injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony."

The bill also amends s. 960.03, F.S., changing the definition of "crime" and "victim" as used in the Florida Crimes Compensation Act (Compensation Act). Specifically, the bill expands the definition to include any offense that results in psychiatric or psychological injury to a minor who was not physically injured by the criminal act.

This bill substantially amends sections 827.03 and 960.03 of the Florida Statutes. It also conforms cross-references to the following sections: 775.084, 775.0877, 782.07, 921.0022, and 948.062.

II. Present Situation:

Criminal Child Abuse
Pursuant to s. 827.03, F.S., criminal child abuse is defined as:

- Intentional infliction of physical or mental injury upon a child;
- An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

Mental Injury
In recent years, the criminal child abuse statute has been challenged as unconstitutionally vague for its failure to define the term "mental injury." In 2002, in *DuFresne v. State*, the Florida Supreme Court considered this issue.

In *DuFresne*, the Court acknowledged that "in order to withstand a vagueness challenge, a statute must provide persons of common intelligence and understanding adequate notice of the proscribed conduct."[1] The Court noted, however, that

> . . . the legislature's failure to define a statutory term does not in and of itself render a penal provision unconstitutionally vague. In the absence of a statutory definition, resort may be had to case law or related statutory provisions which define the term . . .[internal citations omitted][2]

The Court found that the child protection provisions of ch. 39, F.S., were "plainly interrelated" with the provisions of the criminal child abuse statute and that, as such, the criminal child abuse statute was not unconstitutionally vague because the term "mental injury" was adequately defined in ch. 39, F.S.[3] The Court held, "While it may obviously be preferable for the Legislature to place the appropriate definition in the same statute, citizens should be on notice that controlling definitions may be contained in other related statutes."[4]

Section 39.01(42), F.S., defines the term "mental injury" as an "injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior."

Victim Assistance
The Compensation Act is established in ss. 960.01-960.28, F.S. For purposes of the Compensation Act, the term "victim" is defined to include:

- A person who suffers personal physical injury or death as a direct result of a crime;

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[1] *DuFresne v. State*, 826 So.2d 272, 275 (Fla. 2002).
[2] *Id*. at 275.
[3] *Id*. at 278.
[4] *Id*. at 279.

- A person less than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured; or
- A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.[5]

Also for purposes of the Compensation Act, the term "crime" is defined to include "a felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death . . ."[6]

The Compensation Act provides that the following persons are eligible for awards:

- Victim;
- Intervener;
- Surviving spouse, parent or guardian, sibling, or child of a deceased victim or intervener; and
- Any other person who is dependent for his or her principal support upon a deceased victim or intervener.[7]

The Florida Attorney General's Division of Victim Services[8] serves as an advocate for crime victims and victims' rights and administers a compensation program to ensure financial assistance for innocent victims of crime.[9] Injured crime victims may be eligible for financial assistance for medical care, lost income, funeral expenses and other out-of-pocket expenses directly related to the injury.[10] Payment is made from the Crimes Compensation Trust Fund (Trust Fund),[11] and awards to eligible victims are limited as follows:

- No more than $10,000 for treatment;
- No more than $10,000 for continuing or periodic mental health care of a minor victim whose normal emotional development is adversely affected by being the victim of a crime;
- A total of $25,000 for all compensable costs; or
- $50,000 when there is a finding that a victim has suffered catastrophic injury.[12]

The Department of Legal Affairs has rulemaking authority to establish limits on awards within the statutory guidelines.

Pursuant to Rule 2A-2.002, F.A.C., application and benefit payment criteria, limitations, and procedures for victim assistance are provided in a publication entitled "Victim Compensation Assistance," which is incorporated into the rules by reference.[13] This publication provides that

[5] Section 960.03(14), F.S.
[6] Section 960.03(3), F.S.
[7] Section 960.065(1), F.S.
[8] The Division of Victim Services is housed within the Office of Attorney General/Department of Legal Affairs.
[9] See http://myfloridalegal.com/victims (last visited March 15, 2011).
[10] *Id.*
[11] Section 960.21, F.S.
[12] Section 960.13(9)(a), F.S.
[13] The publication is in fact entitled Victim Compensation (BVC P-001), Office of the Attorney General, Division of Victim

the following mental health benefits are available to eligible individuals, up to the statutory limits, when the treatment is directly related to the crime and when such services are rendered by a person licensed to provide mental health counseling services:

- Inpatient mental health care for adults and minors but only for acute, crisis stabilization up to a maximum of seven days, and not to exceed $10,000;
- Outpatient mental health care for adults (18 years of age or older), up to $2,500;
- Mental health care for minors under the age of 16 who saw or heard the crime incident, and who suffered a psychological or psychiatric injury as a result of the crime, but were not physically injured, up to $2,500;
- Mental health care for persons who suffer a psychiatric or psychological injury as a result of a forcible felony against the person, up to $2,500;[14]
- Mental health care (outpatient) for a surviving minor child of a deceased victim, or a minor victim who was physically injured, up to $10,000;[15] and
- Mental health care for a surviving spouse, parent, adult child or sibling of a deceased victim up to $2,500, provided total benefits do not exceed $10,000 per claim.[16]

When the Department of Legal Affairs determines that the monies available in the Trust Fund are insufficient to pay the program's anticipated expenditures, the department may limit the payment of benefits to a percentage of allowable benefits.[17]

III. Effect of Proposed Changes:

The bill changes the organizational structure of s. 827.03, F.S., the criminal child abuse statute, by creating a definition section, followed by an offenses section that describes the conduct proscribed by the statute and the applicable penalties.

Substantively, the bill adds a definition of "mental injury" to mean "injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony." (This new definition is the same as the definition of mental injury s. 39.01, F.S., except that the definition in s. 39.01, F.S., does not include the language relating to expert testimony.)

The bill makes conforming changes to the following sections of the Florida Statutes:

- Section 775.084, F.S., relating to the definition of violent career criminals;
- Section 775.0877, F.S., relating to the criminal transmission of HIV;
- Section 782.07, F.S., relating to manslaughter;
- Section 921.0022, F.S., relating to the "Offense Severity Ranking Chart;" and

Services and Criminal Justice Programs (effective January 1, 2000).

[14] This is the only benefit available to victims who do not suffer physical injury or death.

[15] When the child or victim reaches the age of 18, payment for outpatient services are limited to an additional $2,500 or three years, whichever comes first, provided total benefits do not exceed $10,000 per claim.

[16] Victim Compensation (BVC P-001), Office of the Attorney General, Division of Victim Services and Criminal Justice Programs (effective January 1, 2000).

[17] *Id.*

- Section 948.062, F.S., relating to the review of certain cases involving offenders on probation.

Finally, the bill amends s. 960.03, F.S., by changing the definition of "crime" and "victim" as used in the Compensation Act. Specifically, the bill expands the definition to include any offense that results in psychiatric or psychological injury to a minor who was not physically injured by the criminal act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill, by expanding the definition of crime to include offenses that result in only psychiatric or psychological injury to a minor, increases the number of persons potentially eligible for compensation awards.

C. Government Sector Impact:

The bill expands the number of persons eligible to receive compensation awards to include minors who suffer only psychiatric or psychological injury as the result of an offense. Because the compensable costs for a minor in these circumstances will typically include only treatment expenses, the fiscal impact will likely be limited to $10,000[18] times the number of minor victims who might become eligible.

VI. Technical Deficiencies:

None.

[18] Section 960.13, 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.)

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

Makes a number of changes to the bill, including:

- Amending the definition of "mental injury" to not require multiple instances caused by the same abuser in order to qualify as mental injury and to allow psychologists licensed under chapter 490, F.S., to provide testimony as an expert witness;
- Removing the affirmative defense provisions in the bill; and
- Providing that a victim of mental injury is included in the definition of "victim" as used in the Florida Crimes Compensation Act.

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 1156
INTRODUCER:	Senator Garcia
SUBJECT:	Dextromethorphan
DATE:	April 6, 2011
REVISED:	

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

I. Summary:

The bill creates the "Andy Maxfield Dextromethorphan Act." The bill amends Florida Statutes relating to the retail sale of ephedrine and related compounds by including dextromethorphan in many provisions of current law that limit the conditions under which ephedrine and related compounds may be sold by commercial retailers, including those relating to the commission of misdemeanors and felonies under certain conditions.

This bill substantially amends the following section of the Florida Statutes: 893.1495.

II. Present Situation:

Ephedrine, Pseudoephedrine, Phenylpropanolamine, and Methamphetamine

Ephedrine, pseudoephedrine, and phenylpropanolamine are drugs found in both prescription and nonprescription products used to relieve nasal or sinus congestion caused by the common cold, sinusitis, hay fever, and other respiratory allergies. However, these chemicals are also used in the unlawful production of methamphetamine, a Schedule II controlled substance under state and federal law.[1]

Methamphetamine is a central nervous system stimulant drug that is similar in structure to amphetamine. Methamphetamine is a white, odorless, bitter-tasting crystalline powder that easily

[1] Section 893.03(2)(c)(4), F.S., and 21 C.F.R. s. 1308.12(d)(2). The drug "has limited medical uses for the treatment of narcolepsy, attention deficit disorders, and obesity." U.S. Drug Enforcement Administration, *Methamphetamine*, *available at* http://www.justice.gov/dea/concern/meth.html (citing by footnote to the National Institute on Drug Abuse, Research Report - Methamphetamine Abuse and Addiction, www.drugabuse.gov/) (last visited March 30, 2011).

dissolves in water or alcohol and is taken orally, intranasally (snorting the powder), by needle injection, or by smoking. Methamphetamine increases the release and blocks the reuptake of the brain chemical (or neurotransmitter) dopamine, leading to high levels of the chemical in the brain—a common mechanism for most drugs of abuse. Dopamine is involved in reward, motivation, the experience of pleasure, and motor function. Methamphetamine's ability to release dopamine rapidly in reward regions of the brain produces the intense euphoria, or "rush," that many users feel after snorting, smoking, or injecting the drug.[2]

Taking even small amounts of methamphetamine can result in many of the same physical effects as those of other stimulants, such as cocaine or amphetamines, including increased wakefulness, increased physical activity, decreased appetite, increased respiration, rapid heart rate, irregular heartbeat, increased blood pressure, and hyperthermia. Long-term methamphetamine abuse has many negative health consequences, including extreme weight loss, severe dental problems ("meth mouth"), anxiety, confusion, insomnia, mood disturbances, and violent behavior. Chronic methamphetamine abusers can also display a number of psychotic features, including paranoia, visual and auditory hallucinations, and delusions.[3]

Ephedrine, pseudoephedrine, and phenylpropanolamine are listed precursor chemicals under Florida law.[4] A "listed precursor chemical" is a chemical that may be used in manufacturing a controlled substance in violation of ch. 893, F.S., and is critical to the creation of the controlled substance, and includes any salt, optical isomer, or salt of an optical isomer, whenever the existence of such salt, optical isomer, or salt of optical isomer is possible within the specific chemical designation. These chemicals are also listed chemicals. A "listed chemical" is any precursor chemical or essential chemical named or described in s. 893.033, F.S.[5]

Ephedrine, pseudoephedrine, and phenylpropanolamine are also "list 1" chemicals under federal law.[6] A "list 1" chemical is a chemical specified by regulation of the U.S. Attorney General as a chemical that is used in manufacturing a controlled substance in violation of federal drug abuse prevention and control laws and is important to the manufacture of controlled substances, and includes (until otherwise specified by regulation of, or upon petition to, the U.S. Attorney General) ephedrine, pseudoephedrine, and phenylpropanolamine, and other listed chemicals.[7] These chemicals, including their salts, optical isomers, and salts of optical isomers, are also designated methamphetamine precursor chemicals.[8]

Current Florida law defines "ephedrine or related compounds" as ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers.[9] The law regulates the retail sale of ephedrine or related compounds by preventing persons from displaying products containing such compounds or offering them for retail sale other than behind

[2] U.S. Department of Health & Human Services, National Institute on Drug Abuse, *InfoFacts: Methamphetamine*, March 2010, p. 1.
[3] *Id.*
[4] Section 893.033(1)(f),(v), and (z), F.S.
[5] Section 893.02(13), F.S. The inclusion of a chemical as a listed precursor chemical does not bar, prohibit, or punish legitimate use of the chemical.
[6] 21 U.S.C. s. 802(34)(c)(I) and (K). Many of the federal list 1 chemicals are also precursor chemicals under s. 893.033, F.S.
[7] *Id.*
[8] 6 U.S.C. s. 220(c).
[9] *See* s. 893.1495(1), F.S.

a checkout counter where the public is not permitted or other such location that is not otherwise accessible to the general public.[10] The quantity of such products that may be purchased is strictly limited.[11] The owner or primary operator of a retail outlet that sells such products is required to properly train employees engaged in their sale.[12] Retailers are required, unless exempted, to utilize an electronic recordkeeping system, approved by the Florida Department of Law Enforcement (FDLE) for the purpose of recording and monitoring the real-time purchase of such products and for the purpose of monitoring this information in order to prevent or investigate illegal purchases of these products.[13] Violations of provisions of the law related to the sale or display of such products and employee training regarding the sale of such products, amount to misdemeanors or felonies, depending on the nature of the violation.[14]

In terms of restrictions on quantity, current law specifically provides that a person may not knowingly obtain or deliver to an individual in any retail over-the-counter (OTC) sale any nonprescription compound, mixture, or preparation containing ephedrine or related compounds in excess of the following amounts:

- In any single day, any number of packages that contain a total of 3.6 grams of ephedrine or related compounds;
- In any single retail OTC sale, three packages, regardless of weight, containing ephedrine or related compounds; or
- In any 30-day period, in any number of retail OTC sales, a total of 9 grams or more of ephedrine or related compounds.

Dextromethorphan

Dextromethorphan (DXM) is one of the most widely used antitussive (cough suppressant) agents worldwide. It was approved for use by the federal Food and Drug Administration (FDA) in 1958 as a non-prescription cough medication. Currently, DXM is found in more than 125 OTC patented products to treat cough and cold symptoms. Medications are available in pills, gel caps, lozenges, liquids, and syrups, either alone or in combination with other active ingredients such as antihistamines, decongestants, and/or expectorants.[15]

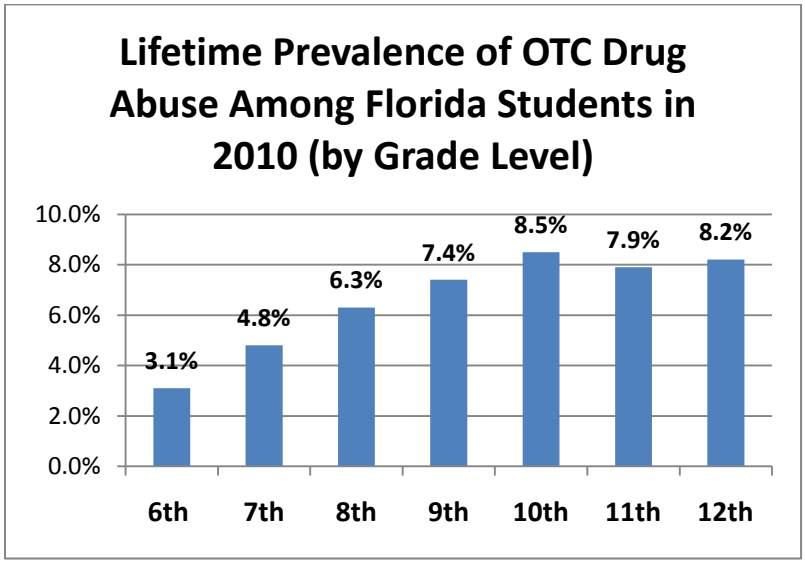
The U.S. Justice Department's Drug Enforcement Administration (DEA) has reported an increasing abuse of DXM in recent years, especially among adolescents.[16] DXM-containing cough suppressants are abused for their euphoriant, hallucinogenic, and "out-of-body experience" properties, which is generally associated with doses 10 to 20 times greater than the

[10] *See* s. 893.1495(3), F.S.
[11] *See* s. 893.1495(2), F.S.
[12] *See* s. 893.1495(4), F.S.
[13] *See* s. 893.1495(5), F.S.
[14] *See* s. 893.1495(11), F.S.
[15] U.S. Department of Justice, Drug Enforcement Administration, "Dextromethorphan: Drug Fact Sheet," July 14, 2010, p. 1, available at http://www.drugabuse.gov/pdf/infofacts/Methamphetamine10.pdf (last visited March 30, 2011).
[16] Section 877.111, F.S., makes it unlawful for any person to inhale or ingest, or to possess with intent to breathe, inhale, or drink, any compound, liquid, or chemical containing certain substances for the purpose of inducing a condition of intoxication or which distorts or disturbs the auditory, visual, or mental processes. DXM is not included in the statute's list of substances subject to this provision.

dose recommended for cough suppression (10-30 mg).[17] In high enough doses, the abuse of DXM can cause serious adverse events, such as psychosis, brain damage, seizure, loss of consciousness, irregular heartbeat, and even death.[18] Cases of long-term DXM abuse exhibit features of dependence, including tolerance and physical withdrawal symptoms.[19]

DXM is not presently a scheduled substance or listed precursor chemical under the Controlled Substances Act, nor is DXM a known precursor chemical in the production of methamphetamine. However, in August 2010, the DEA listed DXM as a drug and chemical of concern and federal authorities have indicated that DXM could be added to the Controlled Substances Act if warranted.[20]

The Department of Children and Families began surveying students in middle-school about their use of OTC drugs in 2008, with the Florida Youth Substance Abuse Survey (FYSAS).[21] Students were asked, "On how many occasions (if any) have you used drugs that can be purchased from a store without a prescription – such as cold and cough medication – in order to get high" in your lifetime and in the past 30 days? It is important to note that this question does not specifically ask about OTC drugs containing DXM and only cites "cold and cough medication" as one example. Since 2008, the FYSAS has indicated that approximately 5 percent of Florida's middle school students report that they used drugs like cold and cough medications to get high at least once in their lifetime. Among middle school students, the lifetime prevalence of OTC drug abuse is higher than nearly all illicit drugs on the survey. The same question was added to the high school survey in 2010, allowing comparisons of lifetime prevalence across all grade levels. As depicted in the figure below, the prevalence of OTC drug abuse increases across successively higher grade levels, with the highest lifetime prevalence (8.5 percent) reported by 10th graders:



[17] *Supra*, note 15.
[18] Terrie, Yvette C., "Dextromethorphan Abuse," *Pharmacy Times*, November 1, 2008.
[19] Chyka, P.A., Erdman, A.R., Manoguerra, A.S., et al., "Dextromethorphan Poisoning: An Evidence-based Consensus Guideline for Out-of-Hospital Management," *Clinical Toxicology*, 2007, vol. 45, no. 6, pp. 662-677.
[20] U.S. Dept. of Justice, Drug Enforcement Administration, "Drugs and Chemicals of Concern: Dextromethorphan," August 2010, available at http://www.deadiversion.usdoj.gov/drugs_concern/dextro_m/dextro_m.htm (last visited March 30, 2011).
[21] Results are available at http://www.dcf.state.fl.us/programs/samh/publications/fysas/ (last visited March 30, 2011).

III. Effect of Proposed Changes:

Section 1 provides that this act may be cited as the "Andy Maxfield Dextromethorphan Act." Andy Maxfield was a Miami Lakes resident who died from an overdose of an OTC product containing DXM on August 6, 2010, at the age of 19, according to a web site created by his parents following his death.[22] Andy's death was the subject of a television news story in Miami and Fort Lauderdale.[23]

Section 2 amends s. 893.1495, F.S., to provide that the term "ephedrine, dextromethorphan, or related compounds" means ephedrine, pseudoephedrine, phenylpropanolamine, dextromethorphan, or any of their salts, optical isomers, or salts of optical isomers.

The bill goes on to change all instances of "ephedrine or related compounds" to "ephedrine, dextromethorphan, or related compounds" within the statute that are related to the sale or display of such products, and employee training regarding the sale of such products, except for one instance. In s. 893.1495(5), F.S., the bill separates DXM from ephedrine and its related compounds by maintaining the requirement that any person purchasing or acquiring any nonprescription product containing ephedrine or related compounds must sign his or her name on a record of the purchase, but persons purchasing or acquiring products containing DXM are not required to sign a record of the purchase. Those purchasing or acquiring DXM-containing products are required by the bill to be at least 18 years of age and produce a government-issued photo identification, as are persons purchasing or acquiring products containing ephedrine or its related compounds under current law.

Criminal offenses in s. 893.1495(2), (3), and (4), F.S., relevant to ephedrine or related compounds would be relevant to dextromethorphan or related compounds. Section s. 893.1495(11), F.S., provides that a violation of subsection (2), subsection (3), or subsection (4), is a second degree misdemeanor[24] for a first offense, a first degree misdemeanor[25] for a second offense, and a third degree felony[26] for a third or subsequent offense.

The bill does not include DXM in any provisions of current law relating to the FDLE electronic recordkeeping system for products containing ephedrine or related compounds.

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

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[22] *See* http://www.andymaxfield.com/ (last visited March 30, 2011).
[23] *See* http://www.wsvn.com/features/articles/investigations/MI89843/ (last visited March 30, 2011).
[24] A second degree misdemeanor is punishable by up to 60 days in a county jail and a fine of up to $500 may also be imposed. ss. 775.082 and 775.083, F.S.
[25] A first degree misdemeanor is punishable by up to one year in a county jail and a fine of up to $1,000 may also be imposed. ss. 775.082 and 775.083, F.S.
[26] A third degree felony is punishable by up to 5 years in a state prison and a fine of up to $5,000 may also be imposed. ss. 775.082 and 775.083, F.S.

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 could cause an indeterminate increase in the cost of doing business for retailers who sell DXM-containing products due to the requirements in the bill related to product sales, product display, and employee training. (See also "Related Issues" section of this bill analysis.)

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet met to provide an impact estimate on the bill.[27] However, the CJIC has estimated that HB 487, which is identical to SB 1156, would have an insignificant prison bed impact.

VI. Technical Deficiencies:

The bill eliminates the current-law definition of "ephedrine or related compounds" in favor of the bill's definition of "ephedrine, dextromethorphan, or related compounds." However, certain portions of s. 893.1495, F.S., that are not amended by the bill rely on the existing definition of "ephedrine or related compounds," and without that existing definition, those provisions would contain an undefined term if the bill becomes law. The provisions in question are:

[27] Senate Criminal Justice Committee staff has requested that the bill be placed on a future CJIC agenda.

- FDLE is required to approve an electronic recordkeeping system for the purpose of monitoring the real-time purchase of products containing ephedrine or related compounds.[28]
- In order to be granted an exemption from electronic reporting, a retailer must maintain a sales volume of less than 72 grams of ephedrine or related compounds in a 30-day period.[29]
- The electronic recordkeeping system must record the name of the product containing ephedrine or related compounds.[30]
- A nonprescription product containing any quantity of ephedrine or related compounds may not be sold over the counter unless reported to the FDLE electronic recordkeeping system.[31]
- The requirements of s. 893.1495, F.S., relating to the marketing, sale, or distribution of products containing ephedrine or related compounds supersede any local ordinance or regulation.[32]

VII. Related Issues:

The bill places the same restrictions on the quantity of DXM-containing products that may be sold as are currently in law for products containing ephedrine or related compounds. However, the bill exempts the sale of DXM-containing products from the FDLE electronic recordkeeping system, which will leave retailers without a real-time mechanism for tracking the quantity of DXM-containing products sold to certain purchasers in any single day or over a 30-day period, as required by the bill. It cannot be ascertained how retailers will keep track of those data in a reliable, practical, and affordable manner in order to comply with the requirements of the bill.

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.

[28] *See* s. 893.1495(5)(b), F.S.
[29] *Id.*
[30] *See* s. 893.1495(5)(b)3., F.S.
[31] *See* s. 893.1495(6), F.S.
[32] *See* s. 893.1495(9), F.S.

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Jim King Keep Florida Working Act."

Section 2. Paragraph (b) of subsection (1), paragraph (f) of subsection (2), paragraph (c) of subsection (3), and subsection (4) of section 943.0585, Florida Statutes, are amended, subsection (5) of that section is renumbered as subsection (7), and a new subsection (5) and subsection (6) are added to that section, to read:

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943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident

of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(b) The petitioner’s sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent

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for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains.

3. Has never secured a prior sealing or expunction, except as provided in subsection (5) and s. 943.059(5), of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, or from any jurisdiction outside the state, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (2)(h) and the record is otherwise eligible for expunction.

4. Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. A certificate of eligibility for expunction is valid for 12


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months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the renewal application. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(f) Has never secured a prior sealing or expunction, except as provided in subsection (5) and s. 943.059(5), of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (h) and the record is otherwise eligible for expunction.

(3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

(c) For an order to expunge entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of an order to expunge which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged, except as provided in subsection (5) and s. 943.059(5). Upon receipt of such notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to expunge. The department shall seal the record until such time as the order is voided by the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any


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criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests and subsequent dispositions covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive

position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), chapter 916, s. 985.644, chapter 400, or chapter 429;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or

7. Is seeking authorization from a seaport listed in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12.

(b) Subject to the exceptions in paragraph (a), a person who has been granted an expunction under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person’s failure to recite or acknowledge an expunged criminal history record, including failure to recite or acknowledge such information on an employment application.

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., 6., and 7. for their respective licensing, access authorization, and employment

purposes, and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) The department may disclose the contents of an expunged record to the subject of the record upon receipt of a written, notarized request from the subject of the record.

(5) EXPUNCTION OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING OR EXPUNCTION.—

(a) A court may expunge a person's criminal history record after a prior criminal history record has been sealed or expunged only if the person obtains a certificate from the department to expunge the criminal history record. The department may issue the certificate for a second expunction only if:

1. The person has had only one prior expunction of his or her criminal history record under this section or one prior expunction following the sealing of the same arrest or alleged criminal activity that was expunged;

2. The person has not been arrested in this state during the 10-year period prior to the date on which the application

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for the certificate is filed; and

3. The person has not previously sealed or expunged a criminal history record that involved the same offense to which the petition to expunge pertains.

(b) All other provisions and requirements of this section apply to an application to expunge a second criminal history record.

(6) INFORMATION.—Each website for the office of a clerk of court must include information relating to procedures to seal or expunge criminal history records. This information must include a link to related information on the department's website.

Section 3. Paragraph (b) of subsection (1), paragraph (e) of subsection (2), paragraph (c) of subsection (3), and paragraphs (a) and (b) of subsection (4) of section 943.059, Florida Statutes, are amended, subsection (5) is renumbered as subsection (6), and a new subsection (5) is added to that section, to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a

certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any

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law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each petition to a court to seal a criminal history record is complete only when accompanied by:

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

3. Has never secured a prior sealing or expunction<u>, except as provided in subsection (5),</u> of a criminal history record under this section, former s. 893.14, former s. 901.33, former s. 943.058, or from any jurisdiction outside the state.

4. Is eligible for such a sealing to the best of his or her knowledge or belief and does not have any other petition to seal or any petition to expunge pending before any court.


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Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to petitioning the court to seal a criminal history record, a person seeking to seal a criminal history record shall apply to the department for a certificate of eligibility for sealing. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for sealing. A certificate of eligibility for sealing is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the renewal application. The department shall issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record provided that such person:

(e) Has never secured a prior sealing or expunction<u>, except as provided in subsection (5),</u> of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058.

(3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

(c) For an order to seal entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of any order to seal which is contrary to law because the person who is the subject of the

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record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged, except as provided in subsection (5). Upon receipt of such notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to seal. The department shall seal the record until such time as the order is voided by the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests and subsequent dispositions covered by the sealed record, except when the subject of the record:

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1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), s. 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or

8. Is seeking authorization from a Florida seaport identified in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12.

(b) Subject to the exceptions in paragraph (a), a person

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who has been granted a sealing under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge a sealed criminal history record, including failure to recite or acknowledge such information on an employment application.

(5) SEALING OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING OR EXPUNCTION.—

(a) A court may seal a person's criminal history record after a prior criminal history record has been sealed or expunged only if the person obtains a certificate from the department to seal the criminal history record. The department may issue the certificate for a second sealing only if:

1. The person has had only one prior expunction or sealing of his or her criminal history record under s. 943.0585 or this section or one prior expunction following the sealing of the same arrest or alleged criminal activity that was expunged;

2. The person has not been arrested in this state during the 5-year period prior to the date on which the application for the certificate is filed; and

3. The person has not previously sealed or expunged a criminal history record that involved the same offense to which the petition to seal pertains.

(b) All other provisions and requirements of this section apply to an application to seal a second criminal history record.

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

589598

========== 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 criminal history records; providing a short title; amending s. 943.0585, F.S.; authorizing a court to expunge a criminal history record of a person who had a prior criminal history record sealed or expunged in certain circumstances; authorizing a person to lawfully deny or fail to acknowledge the arrests and subsequent dispositions of an expunged record under certain circumstances; providing that a person may fail to recite or acknowledge an expunged criminal history record on an employment application without committing certain violations; authorizing the Department of Law Enforcement to disclose the contents of an expunged record to the subject of the record upon the subject's request; providing requirements for a second expunction; requiring the website of a clerk of court to include information relating to sealing and expunction procedures and a link to related information on the department's website; amending s. 943.059, F.S.; authorizing a court to seal a criminal history record of a person who had a prior criminal history record sealed or expunged in certain circumstances; authorizing a person to lawfully deny or fail to acknowledge the arrests and subsequent


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dispositions of a sealed record under certain circumstances; providing that a person may fail to recite or acknowledge a sealed criminal history record on an employment application without committing certain violations; providing requirements for a second sealing; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/12/2011	.	
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The Committee on Criminal Justice (Margolis) recommended the following:

Senate Amendment to Amendment (589598) (with title amendment)

Delete lines 416 - 417
and insert:
Section 4. A person who has been found guilty of, regardless of adjudication, has entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent for any of the following traffic violations may apply to the Department of Law Enforcement for a certificate of eligibility to expunge or seal his or her criminal history record pursuant to s. 943.0585 or s. 943.059, Florida Statutes, respectively:

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(1) A crash involving damage to a vehicle or property in violation of s. 316.061(1), Florida Statutes;

(2) Filing a false report in violation of s. 316.067, Florida Statutes;

(3) Failing to follow the lawful orders of a police department or fire department official in violation of s. 316.072(3), Florida Statutes;

(4) Reckless driving in violation of s. 316.192(3)(c)1., Florida Statutes; or

(5) Driving while a license is suspended, revoked, canceled, or disqualified in violation of s. 322.34(2)(a), Florida Statutes.

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

And the title is amended as follows:

Delete line 453

and insert:

second sealing; authorizing a person to apply to the Department of Law Enforcement for a certificate of eligibility to expunge or seal his or her criminal history record for certain specified traffic violations; 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 1402
INTRODUCER:	Senator Smith
SUBJECT:	Expunging Criminal History Records
DATE:	April 7, 2011
REVISED:	

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

I. Summary:

The bill creates s. 943.0595, F.S., which permits automatic qualification for expunction of criminal history records under certain circumstances. It authorizes a person who has been arrested but has not had any charges filed by the state attorney, or who has had charges dropped, dismissed, or nolle prossed, or who has been found not guilty or is acquitted after trial, to petition the court to have his or her criminal history record expunged, without first being required to obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE).

This bill creates section 943.0595, Florida Statutes. It also provides conforming cross-references to the following sections of the Florida Statutes: 943.0582, 943.0585, 943.059, 948.08, 948.16, 961.06, and 985.345.

II. Present Situation:

Sealing and Expunction of Criminal History Records

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records. The FDLE can administratively expunge non-judicial records of arrest that are made contrary to law or by mistake.

When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency other than the FDLE. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. The FDLE, on the other hand, is required to retain expunged records. When a record is sealed, it is not destroyed, but access is

limited to the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.

Records that have been sealed or expunged are confidential and exempt from the public records law. It is a first-degree misdemeanor to divulge their existence, except to specified entities for licensing or employment purposes.[1]

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,[2] petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.[3]

In 1992, the Legislature amended the sealing and expunction statute to require a person seeking a sealing or expunction to first obtain a certificate of eligibility from FDLE and then, if the person meets the statutory criteria based on the department's criminal history check and receives a certificate, he or she can petition the court for a record sealing or expunction.[4] It is then up to the court to decide whether the sealing or expunction is appropriate.

A criminal history record may be expunged by a court if the petitioner has obtained a certificate of eligibility, remits a $75 processing fee, and swears that he or she:

- has not previously been adjudicated guilty of any offense or adjudicated delinquent for certain offenses;
- has not been adjudicated guilty or delinquent for any of the charges he or she is currently trying to have sealed or expunged;
- has not obtained a prior sealing or expunction; and
- is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before the court.[5]

In addition, the record must have been sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court, regardless of the outcome of the trial.[6] In other words, if the formal adjudication of guilt is withheld by the court, or the applicant is acquitted, the record must first be sealed. If the charges are dropped, the record can be immediately expunged. A conviction disqualifies a record from being expunged or sealed. The criteria only allow for one record sealing and expungement.

[1] Section 943.0585(4)(c), F.S.
[2] These types of employment include: law enforcement, the Florida Bar, working with children, the developmentally disabled, or the elderly through the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities, or a Florida seaport.
[3] Section 943.0585(4)(a), F.S.
[4] Section 943.0585(2), F.S.
[5] Section 943.0585(1)(b), F.S.
[6] Section 943.0585(2)(h), F.S.

Law enforcement asserts that being found "not guilty" or being acquitted at trial means the prosecutor failed to meet the burden of proving guilt beyond a reasonable doubt; it is not necessarily equivalent to a finding of innocence. The same was said to apply when charges are dismissed because there are reasons other than innocence that can explain why an arrest may not result in a conviction. Examples given during testimony include witnesses being uncooperative, evidence being suppressed, or charges being dropped to secure a plea of guilty against another defendant.[7]

The same criteria relating to expunction apply when seeking to seal a criminal history record under s. 943.059, F.S. Any person knowingly providing false information on the sworn statement commits a felony of the third degree.[8]

The Legislature also prohibits criminal history records relating to certain offenses in which a defendant (adult or juvenile) has been found guilty or has pled guilty or nolo contendere, regardless of whether adjudication was withheld, from being sealed or expunged.[9]

Expunction of Juvenile Criminal History Records

Juveniles have a few more options than adults do when choosing to have a record expunged. If a juvenile successfully completes a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor, he or she is eligible to have their arrest expunged, providing they have no other past criminal history.[10] This expunction does not prohibit the youth from requesting a regular sealing or expunction under s. 943.0585 or s. 943.059, F.S., if he or she is otherwise eligible.[11]

Juvenile delinquency criminal history records maintained by the FDLE are also expunged automatically when the youth turns 24 years of age (if he or she is not a serious or habitual juvenile offender or committed to a juvenile prison) or 26 years of age (if he or she is a serious or habitual juvenile offender or committed to a juvenile prison), as long as the youth is not arrested as an adult or adjudicated as an adult for a forcible felony.[12] This automatic expunction does not prohibit the youth from requesting a sealing or expunction under s. 943.0585 or s. 943.095, F.S., if he or she is otherwise eligible.

Criminal history records are public records under Florida law and must be disclosed unless they have been sealed or expunged or have otherwise been exempted or made confidential.[13]

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[7] Public testimony by law enforcement during 2008 Senate Criminal Justice Committee hearings on CS/SB 2152 (employment barriers for ex-offenders).
[8] Section 943.0585(1), F.S.
[9] These offenses include the following: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child; lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and, other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.
[10] Section 985.125, F.S.
[11] Section 943.0582, F.S.
[12] Section 943.0515(1) and (2), F.S.
[13] Section 119.07(1), F.S., s. 24(a), Art. I, State Constitution.

Fingerprints are exempt and are not disclosed by the FDLE. Juvenile criminal history information that has been compiled and maintained by the FDLE since July 1, 1996, is also considered by the department to be a public record, including felony and misdemeanor criminal history information.[14]

III. Effect of Proposed Changes:

The bill creates s. 943.0595, F.S., which permits automatic qualification for expunction of criminal history records under certain circumstances. It authorizes a person who has been arrested but has not had any charges filed by the state attorney, or who has had charges dropped, dismissed, or nolle prossed, or who has been found not guilty or is acquitted after trial, to petition the court to have his or her criminal history record expunged, without first being required to obtain a certificate of eligibility from the FDLE. Instead of requiring a certificate from the FDLE, the bill requires a petition to be accompanied by a certified copy of the disposition of the offenses.

The state attorney and the arresting agency may respond to the court regarding the completed expungement petition. Multiple dates of arrest may be expunged in one court action under the bill. If relief is granted, the clerk of the court must notify the state attorney, the county, and the arresting agency. If the arresting agency disseminated the criminal history record information to any other agency, it must forward the court order to such agency. The FDLE must forward the order to the Federal Bureau of Investigation. If the county disseminated the information to any other agency, it too is responsible for forwarding the court order to that agency.

The FDLE and other criminal justice agencies are not required to comply with court orders that are contrary to law. The FDLE must notify the court, the state attorney, the petitioner, and the arresting agency within 5 business days of determining that an order is contrary to law. The state attorney must take action within 60 days to correct the record and petition the court to void the order. The record does not have to be surrendered to the court and it shall be maintained by the FDLE and other criminal justice agencies.

The bill also provides that a person obtaining an expungement under this newly created section can still seek an expungement or sealing under ss. 943.0585 or 943.059, F.S., if the person is otherwise eligible for such sealing or expungement.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[14] Section 943.053(3)(a), F.S., ch. 96-388, L.O.F.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact to the FDLE is as follows:[15]

Expenditures	FY 11 – 12	FY 12 – 13	FY 13 - 14	
11 Positions - Government Analyst I and 10 Criminal Justice Customer Service Specialists	$515,519	$515,519	$515,519	Salary & Benefits
Standard Expense for 11 Positions	$114,983	$72,105	$72,105	Expenses
Standard HR Services for 11 Positions	$3,916	$3,916	$3,916	Human Resources Services
System Programming to include analysis, design, documentation and testing	$36,075			Expense - programming
TOTAL	**$649,545**	**$570,592**	**$570,592**	

In addition, the bill will require local and county criminal justice agencies to process additional court orders generated by the automatic expunction of criminal history records. State attorneys will have new workloads in determining eligibility prior to court actions. Legal staff will have to address cases where FDLE notifies them that an order was issued in error.[16]

VI. Technical Deficiencies:

None.

[15] FDLE 2011 Legislative Analysis for SB 1402, on file with the Senate Criminal Justice Committee.
[16] *Id.*

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:	CS/SB 1504
INTRODUCER:	Rules Committee and Senator Simmons
SUBJECT:	Initiative Petitions
DATE:	April 7, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	EE	**Favorable**
2.	Seay	Phelps	RC	**Fav/CS**
3.	Cellon	Cannon	CJ	**Pre-Meeting**
4.			BC	
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:

Committee Substitute for Senate Bill 1504 seeks to limit the validity of a signed initiative petition to a period of 30 months. The bill provides that paid petition circulators must meet certain qualifications and that the political committee sponsoring the initiative must have paid petition circulators sign and complete an affidavit. The bill adds criminal penalties if a paid petition circulator or sponsoring committee violates specified restrictions or requirements; and if a person alters a signed initiative petition form without knowledge or consent of the person who signed the form. The bill specifies the time period to initiate a judicial challenge to an amendment to the State Constitution by legislative joint resolution. The bill requires the Attorney General to prepare a revised ballot title and ballot summary proposed by joint resolution of the Legislature if a court determines the original ballot title and ballot summary to be deficient. The bill allows a reviewing court to retain continuing jurisdiction to correct any revisions by the Attorney General that allegedly remain confusing, misleading, or deficient. The bill provides that if the court's decision is not reversed, the Department of State is required to place the amendment with the revised ballot title and ballot summary on the ballot.

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

This bill substantially amends ss. 15.21, 16.061, 100.371, 101.161, 104.185, and 1011.73 and creates s. 101.161 of the Florida Statutes.

II. Present Situation:

Constitutional Amendments by Initiative Petitions
Article XI of the Florida Constitution allows voters to approve constitutional amendments proposed through the following methods:

- Proposed by joint resolution passed by a three-fifths vote of each house of the Legislature;
- Proposal by the Constitution Revision Commission;
- Proposal by the Taxation and Budget Reform Commission; or
- Proposal by the citizen initiative petition.

Petitions signed by the requisite number of voters may be used to place an issue[1] before voters and for several other purposes. Most notably, petitions are used to secure ballot position for constitutional amendments proposed by citizen initiatives. Florida adopted the citizen initiative process in 1968.[2] Section 3, Art. XI, of the Florida Constitution, which authorizes citizen initiatives, states:

> The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

Accordingly, signatures equal to eight percent of the votes cast in the last presidential election must be gathered to place a citizen initiative amendment on the ballot. For the 2012 general election ballot, 676,811 signatures are required.[3]

Initiative Petition Process
When an individual or group is seeking to place a constitutional amendment on the ballot, they must register as a political committee with the Division of Elections (Division).[4] The political

[1] Under s. 106.011(7), F.S., an issue "means any proposition which is required by the State Constitution, by law or resolution of the Legislature, or by the charter, ordinance, or resolution of any political subdivision of this state to be submitted to the electors for their approval or rejection at an election, or any proposition for which a petition is circulated in order to have such proposition placed on the ballot at any election."
[2] Section 3, Art. XI, FLA CONST.
[3] Florida Department of State: Division of Elections, Congressional District Requirements, *available at* http://election.dos.state.fl.us/constitutional-amendments/cong-dist-require.shtml.
[4] Pursuant to s. 106.03, F.S. *See also* s. 100.371(2), F.S.

committee sponsoring the initiative petition is required to submit the proposed initiative amendment form to the Division prior to being circulated for signatures.[5]

Once the form is approved by the Division, the petition may then be circulated for signature by electors. An elector's signature on the petition form must be dated – and the signature is valid for a period of four years following the date.[6] When a committee has obtained signatures from ten percent of the electors required from at least 25 percent of the state's congressional districts, the Secretary of State is required to submit an initiative petition to the Attorney General and the Financial Impact Estimating Conference.[7] Within 30 days of receipt, the Attorney General must petition the Florida Supreme Court requesting an advisory opinion regarding compliance of the text of the proposed amendment and compliance of the proposed ballot title and summary.[8]

As petition signatures are received, the appropriate supervisor of elections must verify the validity of each signature.[9] In addition, the political committee sponsoring the initiative petition must pay a fee to the appropriate supervisor of elections for the verification of signatures on petitions.[10] Supervisors of elections must certify the total number of valid signatures with the Secretary of State by February 1 of the year of the election.[11] After the filing date, the Secretary of State determines if the requirements for the total number of verified valid signatures and the distribution of the signatures among the state's congressional districts have been met.[12] If the threshold has been met, the Secretary of State issues a certificate of ballot position for the proposed amendment along with a designating number.[13]

Regulation of Petition Circulators

Currently, Florida does not regulate initiative petition circulators. Of the 24 states that currently allow citizen initiatives, more than half of the states require that petition circulators are eligible to vote in the state.[14] Age and residency requirements are among the most common regulations

[5] The Department of State has adopted rules that set out the style and requirements of the initiative amendment form. *See* s. 100.371(2), F.S.; Rule 1S-2.009(2), FLA. ADMIN. CODE.
[6] Section 100.371(3), F.S.
[7] The Secretary of State only submits the initiative petition to the Attorney General and Financial Impact Estimating Conference if three conditions have been met: the initiative sponsor has registered as a political committee; the sponsor has submitted the ballot title, substance, and text of the proposed revision or amendment to the Secretary of State; and the Secretary has received a letter from the Division of Elections confirming the veracity of the electors' signatures. Section 15.21, F.S. *See also* s. 3, Art. XI, FLA. CONST.
[8] Section 16.061, F.S. The text of the proposed amendment is required by the State Constitution to be limited to one subject. Sec. 3, Art. XI, FLA. CONST. The wording of the ballot title and summary "shall be printed in clear and unambiguous language on the ballot." *Florida Dept. of State v. Florida State Conference of NAACP Branches*, 43 So.3d 662, 665 (Fla. 2010); *see also* section 101.161(1), F.S.
[9] *Id.*
[10] *See* section 99.097, F.S.
[11] Initiative petitions for constitutional amendments are only placed on the ballot at general elections; therefore, the deadline for that specific class of initiative petitions would be February 1 of the year of the general election. Section 100.371(1), F.S. The verification fee charged to the sponsoring political committee is 10 cents per signature or the actual cost of verification, whichever is less. Section 100.371(6)(e), F.S.
[12] Section 100.371(4), F.S.
[13] Section 100.371(4); s. 101.161, F.S.
[14] National Conference of State Legislatures, Laws Governing Petition Circulators, last updated May 8, 2009, http://www.ncsl.org/default.aspx?tabid=16535.

governing petition circulators.[15] Some states have also enacted pay-per-signature bans as it has been argued that a circulator's desire to earn more money may motivate fraudulent behavior in gathering additional signatures. There is currently a conflict among federal courts regarding the validity of pay-per-signature bans.[16]

Some groups have used fraudulent, illegal, or unethical practices among petition circulators, including: false claims of residency by "mercenary petition gatherers"; false attestations that the gatherer was present when the petitions were signed; misrepresentations and lies to voters as to the effect of petitions; and "bait-and-switch" and other deceptive tactics to get voters to sign a petition that was not properly explained to them.[17] The extent to which these practices are occurring in Florida is a matter of some debate, although some reports suggest that Florida may not be immune.[18] There have been some reforms to the initiative petition process in Florida in recent years; with fraudulent activity being one of the concerns.[19]

Challenge of Constitutional Amendments

Amendments can be removed from the ballot if the ballot title and summary fail to inform the voter, in clear and unambiguous language, of the chief purpose of the amendment.[20] This has been referred to by the courts as the "accuracy requirement."[21] All constitutional amendments are subject to this requirement; including amendments proposed by the Legislature.[22] In recent years, numerous constitutional amendments proposed by the Legislature have been removed from the ballot by Florida courts for failing to be in "clear and unambiguous language." For example, the Florida Supreme Court removed three amendments adopted through legislative resolution from the 2010 general election ballot.[23]

If a court rules to remove an amendment from the ballot, there is no opportunity for the Legislature to correct a deficiency in the ballot title and ballot summary absent calling a special session.

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[15] Residency requirements have been challenged in courts with mixed results. *See Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614 (8th Cir. 2001) (upheld North Dakota's residency requirement for circulators); *but see Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. 2008) (Oklahoma's residency requirement for circulators violated First Amendment). In a similar case, the U.S. Supreme Court ruled that a Colorado law requiring petition circulators to be *registered voters* was unconstitutional. *See Buckley v. American Constitutional Law Foundation*, 119 S.Ct. 636 (1999).

[16] *See Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614 (8th Cir. 2001) (upheld North Dakota's pay-per-signature ban); *but see Independence Institute v. Buescher*, 718 F. Supp. 2d. 1257 (D. Colo. 2010) (preliminary injunction granted against enforcement of Colorado's pay-per-signature ban).

[17] *See generally* Ballot Initiative Strategy Center, *Ballot Integrity: A Broken System in Need of Solutions* (July 2010).

[18] For example, supervisors of elections found names of dead electors signed on petitions to get proposed constitutional amendments on the 2004 general election ballot. *See e.g.*, Joni James and Lucy Morgan, *Names of the dead found on petitions*, ST. PETERSBURG TIMES, Sept. 28, 2004, at 1B.

[19] The statutory mechanism to revoke one's signature from an initiative petition was adopted by the 2007 Legislature after concerns about fraud; but the signature-revocation mechanism has since been ruled unconstitutional by the Florida Supreme Court. *See* Browning v. Florida Hometown Democracy, 29 So.3d 1053 (Fla. 2010).

[20] *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010).

[21] *Armstrong v. Harris*, 773 So.2d 7, 11-12 (Fla. 2000); *see also* §101.161(1), F.S.

[22] *Id.* at 13.

[23] *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010); *Fla. Dept. of State v. Mangat*, 43 So.3d 642 (Fla. 2010); *Fla. Dept. of State v. Fla. State Conference of NAACP Branches*, 43 So.3d 662 (Fla. 2010).

III. Effect of Proposed Changes:

Section 1 amends s. 100.371(3), F.S., to change the validity of signatures on initiative petitions for a period of 4 years following the date of the signature to a period of 30 months following the date.

Section 2 creates s. 100.372, F.S., to create definitions for "initiative sponsor," "petition circulator," and "paid petition circulator."

This section establishes specific qualifications for paid petition circulators, including: a paid petition circulator must be at least 18 years of age and eligible to vote in Florida; a person is prohibited from acting as a paid petition circulator for 5 years following a conviction or a no contest plea to a criminal offense involving fraud, forgery, or identity theft in any jurisdiction; and a person is required to carry identification while acting as a paid petition circulator.

This section requires that a paid petition circulator may not be paid, directly or indirectly, based on the number of signatures that they receive on an initiative petition.

This section establishes that each initiative petition form presented by a paid petition circulator for another person's signature must legibly identify the name of the paid petition circulator.

This section requires political committees sponsoring an initiative petition to only employ an individual as a paid petition circulator unless the individual has signed an affidavit attesting that they have not been convicted or have entered into a no contest plea to a criminal offense involving fraud, forgery, or identity theft in any jurisdiction. This section specifies that the sponsoring political committee must maintain records of the names, addresses, and affidavits of paid petition circulators for a minimum of four years. Additionally, the section prohibits the political committee sponsoring the initiative from compensating paid petition circulators based on the amount of initiative petition signatures obtained.

Any person who violates the provisions of this section commits a misdemeanor of the first degree. Additionally, the bill authorizes the Department of State to adopt rules to administer this section.

Section 3 amends s. 101.161, F.S., to add clarifying language relating to the definitions of ballot summary and ballot title of constitutional amendments or other public measures placed on the ballot.

This section provides that any action for a judicial determination that a ballot title or summary is misleading or otherwise deficient in a constitutional amendment adopted by joint resolution of the Legislature must commence within 30 days after the joint resolution is filed with the Secretary of State or at least 150 days before the election that the amendment is to appear on the ballot, whichever date is later. Courts are directed to accord priority to a case challenging a joint resolution. This section provides that the Attorney General shall revise the ballot title and ballot summary to correct the deficiency, if appeals are declined, abandoned, or exhausted. If the judicial decision is not reversed, the revised ballot title and ballot summary for the amendment shall be placed on the ballot. This section allows for the court to retain continuing jurisdiction to

correct any revisions by the Attorney General that allegedly remain confusing, misleading, or deficient. This section provides that if a court determines that a constitutional amendment proposed by joint resolution of the Legislature has a deficient ballot title and ballot summary, it is not grounds for removal of the amendment from the ballot.

Section 4 amends s. 104.185, F.S., to provide that an individual who alters an initiative petition form that has been signed by another person, without the other person's knowledge or consent, has committed a misdemeanor of the first degree.

Sections 5, 6, and 7 amend ss. 15.21(2), 16.061(1), and 1011.73(b)(4), F.S., respectively, to replace references to "substance" with "ballot summary," to conform to the amendments incorporated in s. 101.161, F.S.

Section 8 provides that if any provision of this act or its application is later held invalid; the invalid provision or application is severable and does not affect other provisions or applications of the act that may be executed independently of the invalid provision or application.

Section 9 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:

The bill may impose additional administrative costs on a political committee sponsoring a citizen initiative in the screening of paid petition circulators, which is indeterminate at this time.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Rules on March 29, 2011:
The CS differs from the original bill in that it:

- Specifies the time period to initiate a judicial challenge to an amendment to the State Constitution by legislative joint resolution.
- Requires reviewing courts to accord priority to cases challenging constitutional amendments adopted through legislative joint resolution.
- Requires the Attorney General to prepare a revised ballot title and ballot summary to correct a deficiency in the original ballot title and ballot summary, instead of the Secretary of State.
- Allows a reviewing court to retain continuing jurisdiction to correct any revisions by the Attorney General that allegedly remain confusing, misleading, or deficient.

B. Amendments:

None.

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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)

Delete everything after the enacting clause and insert:

Section 1. Subsections (5) and (6) of section 28.246, Florida Statutes, are amended to read:

28.246 Payment of court-related fees, charges, costs of prosecution, and costs; partial payments; distribution of funds.—

(5) When receiving partial payment of fees, service charges, court costs, costs of prosecution, and fines, clerks shall distribute funds according to the following order of

priority:

(a) That portion of fees, service charges, court costs, and fines to be remitted to the state for deposit into the General Revenue Fund and that portion of the costs of prosecution to be remitted to the state shall be deposited into the State Attorneys Revenue Trust Fund, allocated on a pro rata basis among the authorized funds if the total collection amount is insufficient to fully fund such funds as provided by law.

(b) That portion of fees, service charges, court costs, and fines which are required to be retained by the clerk of the court or deposited into the Clerks of the Court Trust Fund within the Justice Administrative Commission.

(c) Except as provided in paragraph (a), that portion of fees, service charges, court costs, and fines payable to state trust funds, allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds as provided by law.

(d) That portion of fees, service charges, court costs, and fines payable to counties, municipalities, or other local entities, allocated on a pro rata basis among the various authorized recipients if the total collection amount is insufficient to fully fund all such recipients as provided by law.

To offset processing costs, clerks may impose either a per-month service charge pursuant to s. 28.24(26)(b) or a one-time administrative processing service charge at the inception of the payment plan pursuant to s. 28.24(26)(c).

(6) A clerk of court shall pursue the collection of any

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fees, service charges, fines, court costs, costs of prosecution, and liens for the payment of attorney's fees and costs pursuant to s. 938.29 which remain unpaid after 90 days by referring the account to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to chapter 559. In pursuing the collection of such unpaid financial obligations through a private attorney or collection agent, the clerk of the court must have attempted to collect the unpaid amount through a collection court, collections docket, or other collections process, if any, established by the court, find this to be cost-effective and follow any applicable procurement practices. The collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent retained by the clerk may be added to the balance owed in an amount not to exceed 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection. The clerk shall give the private attorney or collection agent the application for the appointment of court-appointed counsel regardless of whether the court file is otherwise confidential from disclosure.

Section 2. Section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any unpaid costs of prosecution, court fees, court costs, and

criminal penalties. If sufficient funds are not available to pay all unpaid costs of prosecution, court fees, court costs, and criminal penalties, the clerk of the court shall immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246.

(2) All cash bond forms used in conjunction with the requirements of s. 903.09 must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk of the court for the payment of costs of prosecution, court fees, court costs, and criminal penalties on behalf of the criminal defendant regardless of who posted the funds.

Section 3. Section 938.27, Florida Statutes, is amended to read:

938.27 Judgment for costs on conviction.—

(1) In all criminal and violation-of-probation or community-control cases, convicted persons and persons whose cases are disposed of pursuant to s. 948.08(6)(c) or s. 948.16(2) are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is

withheld.

(2)(a) Notwithstanding any other provision of law, court rule, or administrative order, the court shall impose the costs of prosecution and investigation. Costs of prosecution and investigation shall not be converted to any form of court-ordered community service in lieu of this statutory financial obligation.

(b)~~(a)~~ The court shall impose the costs of prosecution and investigation notwithstanding the defendant's present ability to pay. The court shall require the defendant to pay the costs within a specified period or in specified installments.

(c)~~(b)~~ The end of such period or the last such installment shall not be later than:

1. The end of the period of probation or community control, if probation or community control is ordered;

2. Five years after the end of the term of imprisonment imposed, if the court does not order probation or community control; or

3. Five years after the date of sentencing in any other case.

However, in no event shall the obligation to pay any unpaid amounts expire if not paid in full within the period specified in this paragraph.

(d)~~(c)~~ If not otherwise provided by the court under this section, costs shall be paid immediately.

(3) If a defendant is placed on probation or community control, payment of any costs under this section shall be a condition of such probation or community control. The court may

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revoke probation or community control if the defendant fails to pay these costs.

(4) Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

(5) Any default in payment of costs may be collected by any means authorized by law for enforcement of a judgment.

(6) The clerk of the court shall collect and dispense cost payments in any case, regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law.

(7) Investigative costs that are recovered shall be returned to the appropriate investigative agency that incurred the expense. Such costs include actual expenses incurred in conducting the investigation and prosecution of the criminal case; however, costs may also include the salaries of permanent employees. Any investigative costs recovered on behalf of a state agency must be remitted to the Department of Revenue for deposit in the agency operating trust fund, and a report of the payment must be sent to the agency, except that any investigative costs recovered on behalf of the Department of Law Enforcement shall be deposited in the department's Forfeiture and Investigative Support Trust Fund under s. 943.362.

(8) Costs for the state attorney shall be set in all cases

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at no less than $50 per case when a misdemeanor or criminal traffic offense is charged and no less than $100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred. Costs recovered on behalf of the state attorney under this section shall be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.

(9) Notwithstanding any law, court rule, or administrative order, the clerk shall assign the first of any fees or costs paid by a defendant as payment of the costs of prosecution.

Section 4. Section 985.032, Florida Statutes, is amended to read:

985.032 Legal representation for delinquency cases.—

(1) For cases arising under this chapter, the state attorney shall represent the state.

(2) A juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld shall be assessed costs of prosecution as provided in s. 938.27.

Section 5. 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:

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Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to costs of prosecution; amending s. 28.246, F.S.; providing for remittance of the costs of prosecution to a specified trust fund; providing for allocation of funds in certain circumstances; providing for collection of costs of prosecution; amending s. 903.286, F.S.; providing for the withholding of unpaid costs of prosecution from the return of a cash bond posted on behalf of a criminal defendant; requiring a notice on bond forms of such possible withholding; amending s. 938.27, F.S.; providing liability for the cost of prosecution for persons whose cases are disposed of under specified provisions; requiring courts to impose the costs of prosecution and investigation; requiring that costs of prosecution and investigation not be converted to any form of court-ordered community service; clarifying the types of cases from which the clerk of the court must collect and dispense cost payments; requiring the clerk of the court to assign the first of any fees or costs collected as payment for costs of prosecution; amending s. 985.032, F.S.; providing for assessment of costs of prosecution against a juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld; providing an effective date.

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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. Section 28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fees, charges, ~~and~~ costs, costs of prosecution, and costs of defense; partial payments; distribution of funds.—

(1) The clerk of the circuit court shall report the following information to the Legislature and the Florida Clerks of Court Operations Corporation on a form developed by the

Department of Financial Services:

(a) The total amount of mandatory fees, service charges, and costs; the total amount actually assessed; the total amount discharged, waived, or otherwise not assessed; and the total amount collected.

(b) The amount of discretionary fees, service charges, and costs assessed; the total amount discharged; and the total amount collected.

(c) The total amount of mandatory fines and other monetary penalties; the total amount assessed; the total amount discharged, waived, or otherwise not assessed; and the total amount collected.

(d) The amount of discretionary fines and other monetary penalties assessed; the amount discharged; and the total amount collected.

If provided to the clerk of court by the judge, the clerk, in reporting the amount assessed, shall separately identify the amount assessed pursuant to s. 938.30 as community service; assessed by reducing the amount to a judgment or lien; satisfied by time served; or other. The form developed by the Chief Financial Officer shall include separate entries for recording these amounts. The clerk shall submit the report on an annual basis 60 days after the end of the county fiscal year.

(2) The clerk of the circuit court shall establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

(3) Court costs, fines, and other dispositional assessments shall be enforced by order of the courts, collected by the

clerks of the circuit and county courts, and disbursed in accordance with authorizations and procedures as established by general law.

(4) The clerk of the circuit court shall accept partial payments for court-related fees, service charges, costs, and fines in accordance with the terms of an established payment plan. An individual seeking to defer payment of fees, service charges, costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12. The court may review the reasonableness of the payment plan.

(5) When receiving partial payment of fees, service charges, court costs, <u>costs of prosecution, costs of defense,</u> and fines, clerks shall distribute funds according to the following order of priority:

(a) That portion of fees, service charges, court costs, and fines to be remitted to the state for deposit into the General Revenue Fund.

(b) That portion of fees, service charges, court costs, and fines which are required to be retained by the clerk of the court or deposited into the Clerks of the Court Trust Fund within the Justice Administrative Commission.

<u>(c) That portion of the costs of prosecution to be remitted</u>

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to the state shall be deposited into the State Attorneys Revenue Trust Fund, allocated on a pro rata basis among the authorized funds if the total collection amount is insufficient to fully fund such funds as provided by law.

(d) That portion of the costs of defense to be remitted to the state shall be deposited into the Indigent Criminal Defense Trust Fund, allocated on a pro rata basis among the authorized funds if the total collection amount is insufficient to fully fund such funds are provided by law.

(e) ~~(c)~~ That portion of fees, service charges, court costs, and fines payable to state trust funds, allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds as provided by law.

(f) ~~(d)~~ That portion of fees, service charges, court costs, and fines payable to counties, municipalities, or other local entities, allocated on a pro rata basis among the various authorized recipients if the total collection amount is insufficient to fully fund all such recipients as provided by law.

To offset processing costs, clerks may impose either a per-month service charge pursuant to s. 28.24(26)(b) or a one-time administrative processing service charge at the inception of the payment plan pursuant to s. 28.24(26)(c).

(6) A clerk of court shall pursue the collection of any fees, service charges, fines, costs of prosecution, costs of defense, court costs, and liens for the payment of attorney's fees and costs pursuant to s. 938.29 which remain unpaid after

90 days by referring the account to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to chapter 559. In pursuing the collection of ~~such~~ unpaid financial obligations through a private attorney or collection agent, the clerk of the court must have attempted to collect the unpaid amount through a collection court, collections docket, or other collections process, if any, established by the court, find this to be cost-effective and follow any applicable procurement practices. The collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent retained by the clerk may be added to the balance owed in an amount not to exceed 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection. The clerk shall give the private attorney or collection agent the application for the appointment of court-appointed counsel regardless of whether the court file is otherwise confidential from disclosure.

Section 2. Section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold unpaid fines, fees, court costs, costs of prosecution, costs of defense; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any unpaid court fees, court costs, costs of prosecution, costs of defense, and criminal penalties. If sufficient funds are not available to pay all unpaid court fees, court costs, costs of

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prosecution, costs of defense, and criminal penalties, the clerk of the court shall immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246.

(2) All cash bond forms used in conjunction with the requirements of s. 903.09 must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk of the court for the payment of court fees, court costs, costs of prosecution, costs of defense, and criminal penalties on behalf of the criminal defendant regardless of who posted the funds.

Section 3. Section 938.27, Florida Statutes, is amended to read:

938.27 Judgment for costs on conviction or diversion.—

(1) In all criminal and violation-of-probation or community-control cases, convicted persons and persons whose cases are disposed of pursuant to s. 948.08 or s. 948.16 are liable for payment of the costs of prosecution, costs of defense, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(2) Notwithstanding any other law, court rule, or

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administrative order, the court shall impose the costs of prosecution, defense, and investigation on the defendant. The costs of prosecution, defense, and investigation may not be converted to any form of court-ordered community service in lieu of this financial obligation.

(a) The court shall impose the costs of prosecution, defense, and investigation notwithstanding the defendant's present ability to pay. The court shall require the defendant to pay the costs within a specified period or in specified installments.

(b) The end of such period or the last such installment may ~~shall~~ not be later than:

1. The end of the period of probation or community control, if probation or community control is ordered;

2. Five years after the end of the term of imprisonment imposed, if the court does not order probation or community control; or

3. Five years after the date of sentencing in any other case.

However, in no event shall the obligation to pay any unpaid amounts expire if not paid in full within the period specified in this paragraph.

(c) If not otherwise provided by the court under this section, costs shall be paid immediately.

(3) If a defendant is placed on probation or community control, payment of any costs under this section shall be a condition of such probation or community control. The court may revoke probation or community control if the defendant fails to

pay these costs.

(4) Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

(5) Any default in payment of costs may be collected by any means authorized by law for enforcement of a judgment.

(6) The clerk of the court shall collect and dispense cost payments in any case, regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law.

(7) Investigative costs that are recovered shall be returned to the appropriate investigative agency that incurred the expense. Such costs include actual expenses incurred in conducting the investigation and prosecution of the criminal case; however, costs may also include the salaries of permanent employees. Any investigative costs recovered on behalf of a state agency must be remitted to the Department of Revenue for deposit in the agency operating trust fund, and a report of the payment must be sent to the agency, except that any investigative costs recovered on behalf of the Department of Law Enforcement shall be deposited in the department's Forfeiture and Investigative Support Trust Fund under s. 943.362.

(8) Costs for the state attorney shall be set in all cases at no less than $50 per case when a misdemeanor or criminal

traffic offense is charged and no less than $100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred. Costs recovered on behalf of the state attorney under this section shall be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.

Section 4. Section 985.032, Florida Statutes, is amended to read:

985.032 Legal representation for delinquency cases.—

(1) For cases arising under this chapter, the state attorney shall represent the state.

(2) A juvenile who is adjudicated delinquent or who has adjudication of delinquency withheld shall be assessed the costs of prosecution as provided in s. 938.27 and the costs of defense as provided in s. 938.29.

Section 5. For the purpose of incorporating the amendment made by this act to s. 28.246, Florida Statutes, in a reference thereto, subsection (1) of s. 34.191, Florida Statutes, is reenacted to read:

34.191 Fines and forfeitures; dispositions.—

(1) All fines and forfeitures arising from offenses tried in the county court shall be collected and accounted for by the clerk of the court and, other than the charge provided in s.

318.1215, disbursed in accordance with ss. 28.2402, 34.045, 142.01, and 142.03 and subject to the provisions of s. 28.246(5) and (6). Notwithstanding the provisions of this section, all fines and forfeitures arising from operation of the provisions of s. 318.1215 shall be disbursed in accordance with that section.

Section 6. 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 the costs of prosecution and costs of defense; amending s. 28.246, F.S.; requiring the clerk of the court to distribute the funds received from a defendant according to a specified order of priority when the defendant makes a partial payment to the clerk of costs of prosecution and defense; requiring that a portion of the costs of prosecution be deposited into the State Attorneys Revenue Trust Fund; requiring that a portion of the costs of defense be deposited into the Indigent Criminal Defense Trust Fund; amending s. 903.286, F.S.; requiring the clerk of the court to withhold from the return of a cash bond sufficient funds to pay unpaid costs, including the costs of prosecution and defense; amending s. 938.27, F.S.; imposing certain costs on persons whose

cases are disposed of under a pretrial intervention program or pretrial substance abuse intervention program; requiring the court to impose the costs of prosecution, defense, and investigation on the defendant; prohibiting the court from converting such costs to court-ordered community service; amending s. 985.032,F.S.; requiring that a juvenile who is adjudicated delinquent or has adjudication of delinquency withheld be assessed costs of prosecution and defense; reenacting s. 34.191(1), F.S., relating to the disposition of fines and forfeitures, to incorporate the amendment made to s. 28.246, 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 1508
INTRODUCER:	Senator Wise
SUBJECT:	Costs of Prosecution
DATE:	April 5, 2011
REVISED:	

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

I. Summary:

The bill elevates the distribution priority of costs of prosecution to the State Attorneys Revenue Trust Fund by the clerks of court. Further, the clerk is required to report assessments and collections of costs of prosecution to the state attorney on a monthly basis.

The bill requires costs of prosecution be assessed in pretrial intervention and drug court programs where they are not currently assessed. The bill prohibits costs of prosecution from being converted to community service hours in lieu of payment. It also requires the assessment of costs of prosecution in juvenile delinquency proceedings.

This bill substantially amends the following sections 28.246, 903.286, 938.27, and 985.032 of the Florida Statutes. The bill also reenacts section 34.191(1) of the Florida Statutes for purposes of incorporating the amendment to section 28.246, F.S.

II. Present Situation:

Costs of Prosecution

Section 938.27, F.S., provides that costs of prosecution may be imposed at the rate of $50 in misdemeanor or criminal traffic offense cases and $100 in felony criminal cases unless the prosecutor proves that costs are higher in the particular case before the court.[1] The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.[2]

[1] Section 938.27(8), F.S.
[2] *Id.*

Convicted persons are liable for payment of the costs of prosecution, including any investigative costs incurred by a law enforcement agency, fire department, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission.[3] Conviction, for this purpose, includes a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.[4]

Certain defendants facing conviction may be eligible for pretrial intervention programs, such as misdemeanor or felony pretrial substance abuse education and treatment intervention[5] or treatment-based drug court.[6] Defendants who successfully complete these programs have the charges against them dismissed by the court.[7] Because the charges are dismissed by the court, these defendants are not liable for the payment of costs of prosecution.

Clerks to Collect and Disburse Funds

Section 28.246(2), F.S., requires the clerk of the circuit court (clerk) to establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

The clerk may accept partial payments for all fees, charges, and costs in accordance with the terms of an established payment plan.[8] The clerk may enter into a payment plan[9] when an individual is determined to be indigent for costs by the court.[10]

When partial payments are received as part of a payment plan, the clerks distribute the funds in a specific priority, with each tier being paid in full before moving down the list. The received portion of fees, service charges, court costs, and fines are remitted in the following order:

1) The state for deposit into the General Revenue Fund.
2) The clerk of court or the Clerks of the Court Trust Fund within the Justice Administrative Commission.[11]
3) Various state trust funds including the State Attorneys Revenue Trust Fund and the Indigent Criminal Defense Trust Fund for public defenders.[12,13]
4) Counties and municipalities, or other local entities.[14,15]

[3] Section 938.27(1), F.S.
[4] *Id.*
[5] Sections 948.16 and 948.08(6), F.S., respectively.
[6] Section 948.08(6), F.S. *See* s. 397.334, F.S.
[7] Sections 948.16(2) and 948.08(6)(c), F.S.
[8] Section 28.246(4), F.S.
[9] A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12.
[10] *Id.*
[11] Section 213.131, F.S.
[12] Section 27.525, F.S., to be used for the purposes of indigent criminal defense as appropriated by the Legislature to the public defender or the office of criminal conflict and civil regional counsel.
[13] If the total collection amount is insufficient to fully pay all the entities within this payment distribution tier, the funds are distributed on a pro rata basis. Section 28.246(5), F.S.
[14] *Id.*
[15] Section 28.246(5), F.S.

Accounts unpaid after 90 days are referred to a private attorney[16] or a collection agent[17] to collect any remaining fees, charges, fines, court costs,[18] and liens for the payment of defense attorney's fees and costs.[19]

Community Service in Lieu of Payment
Section 938.30(2), F.S., authorizes a judge to convert any statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person's inability to pay.

In FY 09-10, $8,610,731 in court-related fees, charges, costs, fines, and other monetary penalties were converted into community service under s. 938.30, F.S.[20]

Cash Bond Used to Pay Fines, Costs, and Fees
Section 903.286, F.S., authorizes the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent[21] to pay the following:

- Court fees,
- Court costs, and
- Criminal penalties.

If sufficient funds are not available to pay the above costs, the clerk will immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above costs on behalf of the criminal defendant regardless of who posted the funds.

Delinquency Cases Exempt
Currently juveniles who are adjudicated delinquent or have had adjudication of delinquency withheld are not required to pay the costs of prosecution.

III. Effect of Proposed Changes:

The bill makes defendants liable for the payment of costs of prosecution, including investigative costs, when charges against them are dismissed by the court after successfully completing a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court.

[16] The private attorney must be a member in good standing of The Florida Bar. Section 28.246(6), F.S.
[17] The collection agent must be registered and in good standing pursuant to ch. 559, F.S. Section 28.246(6), F.S.
[18] Pursuant to s. 938.29, F.S.
[19] Section 28.246(6), F.S.
[20] "Payment of Court-related Fees, Charges, Costs, Fines and Other Monetary Penalties, Section 28.246(1), Florida Statutes Annual Report." The Florida Association of Court Clerks and Comptrollers. Fiscal Year: October 1, 2009 to September 30, 2010.
[21] Licensed pursuant to ch. 648, F.S.

The bill requires that the portion of costs of prosecution be remitted to the State Attorneys Revenue Trust Fund in the top priority tier with the General Revenue Fund.

The bill adds "costs of prosecution" to the list of unpaid fees, charges, fines, and costs that can be referred to a private attorney or collection agent for collection.

Notwithstanding any other provision or law, court rule, or administrative order, the bill requires the court to impose the costs of prosecution and investigation and prohibits these costs from being converted into any form of court-ordered community service in lieu of the financial obligation.

The bill adds the "costs of prosecution" to the list of costs a clerk is required to withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. If such payments are not made from the cash bond, the clerk is required to obtain payment from a defendant or, if sufficient funds are not available, require the defendant to enroll in a payment plan. Cash bond forms must display notice of the funds being subject to forfeiture for payment of costs of prosecution as well as other costs, fees, and fines.

The clerk is required to collect and disburse costs of prosecution in all cases, regardless of whether they are disposed of before a judge in open court.

The bill requires that costs of prosecution be assessed in each case number before the court. It further requires additional bookkeeping and a monthly reporting of assessments and payments recorded to the state attorney by the clerk.

The bill requires that costs of prosecution[22] be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[22] As provided in s. 938.27, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Defendants who successfully complete pretrial intervention programs and juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld will now be assessed costs of prosecution.

The bill prohibits costs of prosecution from being converted into court-ordered community service. Defendants may now be responsible for paying this cost as opposed to working the debt off through community service.

C. Government Sector Impact:

This bill appears to have a positive impact on state attorneys for many reasons:

1) Partial payments collected by the clerk of court from defendants on payment plans will be paid to the state attorneys in the first tier priority instead of their previous third tier level. This will result in the state attorney receiving payment faster and before of the clerk of court, an entity it was previously behind.

2) The costs of prosecution will now be able to be collected by private attorneys or collection agents when payment plan accounts remain unpaid for 90 days. This may result in more costs of prosecution being collected and paid to state attorneys.

3) The costs of prosecution and investigation will be prohibited from being converted into court-ordered community service. This may result in more costs of prosecution being collected and paid to state attorneys.

4) The costs of prosecution are now allowed to be withheld by the clerk from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. This will likely result in a positive fiscal impact as the cost of prosecution will be deducted from any cash bonds posted on behalf of a criminal defendant.

5) The costs of prosecution will now be assessed from defendants who successfully complete pretrial intervention programs and juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely result in a positive fiscal impact as these costs were not assessed in these specific cases in the past.

Partial payments collected by the clerk of court from defendants on payment plans are currently paid first to the state, second to the clerk of court, third to state trust funds, including trust funds

for the state attorney and the public defender. By moving the State Attorneys Revenue Trust Fund up to the top tier of the distribution schedule with the state, payments will first be split between the state and the state attorneys. Until those two entities are paid, none of the entities below them will receive funds from the partial payments.

This will have a negative fiscal impact on the state, the clerk of court, and public defenders.

The Association of Court Clerks and Comptrollers states that the conflict between the General Revenue Fund and the State Attorneys Revenue Trust Fund will have an indeterminate negative fiscal impact on the state. In addition, the clerk of court will incur an indeterminate negative fiscal impact as it will now receive funds after the state attorney.[23]

The Florida Public Defender Association states that while 60 percent of collections paid to the Indigent Criminal Defense Trust Fund come from the public defender application fee,[24] this change in the clerk's distribution of partial payments could reduce collections paid to the trust fund by $3 million to as much as $5 million statewide.[25]

VI. Technical Deficiencies:

The bill requires that when partial payments of fees, charges, costs, and fines are received by the clerk of court, costs of prosecution will be remitted to the State Attorneys Revenue Trust Fund in the top priority tier. The top tier is currently occupied by the state with payments deposited into the General Revenue fund.

Language will need to be added to specify how the portion of fees, charges, costs, and fines will be divided between the two entities. Current language in statute for tiers occupied by two or more entities requires that the portions be:

> "allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds as provided by law."

Section 938.27, F.S., is amended to prohibit the costs of prosecution and investigation from being converted into any form of court-ordered community service in lieu of the financial obligation. This change may be more aptly made in s. 938.30, F.S., which provides the court with this kind of discretion.

VII. Related Issues:

None.

[23] Information provided by Randy Long. Florida Association of Court Clerks and Comptrollers. March 25, 2011.
[24] Section 27.52, F.S.
[25] E-mail from Sheldon Gusky. Florida Public Defender Association, Inc. March 24, 2011. (On file with Criminal Justice Committee staff).

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 (Dockery) recommended the following:

Senate Amendment (with title amendment)

Before line 10

insert:

Section 1. Section 493.6120, Florida Statutes, is amended to read:

493.6120 Violations; penalty.—

(1)(a) Except as provided in paragraph (c), a person who engages in any activity for which this chapter requires a license and who does not hold the required license commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A second or subsequent violation of paragraph (a) is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and the department may seek the imposition of a civil penalty not to exceed $10,000.

(c) Paragraph (a) does not apply if the person engages in unlicensed activity within 90 days after the date of the expiration of his or her license.

(2)(a) A person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under this chapter, knowingly and intentionally forces another person to assist the impersonator in an activity within the scope of duty of a professional licensed under this chapter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who violates paragraph (a) during the course of committing a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person who violates paragraph (a) during the course of committing a felony that results in death or serious bodily injury to another human being commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) ~~(1)~~ Any person who violates any provision of this chapter except s. 493.6405, subsection (1), or subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) ~~(2)~~ Any person who is convicted of any violation of this chapter is ~~shall~~ not ~~be~~ eligible for licensure for a period of 5

years.

(5) ~~(3)~~ Any person who violates or disregards any cease and desist order issued by the department commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the department may seek the imposition of a civil penalty not to exceed $5,000.

(6) ~~(4)~~ Any person who was an owner, officer, partner, or manager of a licensed agency at the time of any activity that is the basis for revocation of the agency or branch office license and who knew or should have known of the activity, shall have his or her personal licenses or approval suspended for 3 years and may not have any financial interest in or be employed in any capacity by a licensed agency during the period of suspension.

Section 2. Protecting critical infrastructure facilities.—

(1) A licensed security officer who possesses a valid Class "G" license, or a licensed security agency manager who possesses a valid Class "G" license, who is on duty, in uniform, providing security services on the premises of a critical infrastructure facility, and has probable cause to believe that a person has committed or is committing a crime against the licensed security officer's client or patrons thereof, may temporarily detain the person for the purpose of ascertaining his or her identity and the circumstances of the activity that is the basis for the temporary detention. The security officer may detain the person in a reasonable manner until the responding law enforcement officer arrives at the premises of the client and is in the presence of the detainee.

(2) When temporarily detaining a person, the licensed security officer or security agency manager shall notify the

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appropriate law enforcement agency as soon as reasonably possible. Temporary detention of a person by a licensed security officer or security agency manager must be done solely for the purpose of detaining the person before the arrival of a law enforcement officer. Custody of any person being temporarily detained shall be immediately transferred to the responding law enforcement officer.

(3) A licensed security officer or security agency manager may not detain a person under this section after the arrival of a law enforcement officer unless the law enforcement officer requests the security officer to continue detaining the person. The responsibilities of the licensed security officer or security agency manager do not extend beyond the place where the person was first detained or in the immediate vicinity.

(4) A person may not be temporarily detained under this section longer than is reasonably necessary to effect the purposes of this section.

(5) If a licensed security officer or security agency manager while detaining a person pursuant to this section observes that the person temporarily detained is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer or any person for whom the security officer is responsible for providing protection, or the detainee admits to having a weapon in his or her possession, the security officer or security agency manager may conduct a search of the person and his or her belongings only to the extent necessary for the purpose of disclosing the presence of a weapon. If the search reveals such a weapon, the weapon shall be seized and transferred to the responding law

enforcement officer.

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

(a) A chemical manufacturing facility;

(b) A refinery;

(c) An electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;

(d) A water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(e) A natural gas transmission compressor station;

(f) A liquid natural gas terminal or storage facility;

(g) A telecommunications central switching office;

(h) A deep water seaport or railroad switching yard; or

(i) A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

(7) Class "D" and Class "MB" licensees shall perform duties regulated under this section in a uniform that bears at least one patch or emblem visible at all times clearly identifying the employing agency.

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

And the title is amended as follows:

Delete lines 2 - 3

and insert:

An act relating to security; amending s. 493.6120, F.S.; providing that a person who engages in any activity for which ch. 493, F.S., requires a license, but acts without having a license, commits a misdemeanor of the first degree; providing that a person commits a felony of the third degree for a second or subsequent offense of engaging in activities without a license; authorizing the Department of Agriculture and Consumer Services to impose a civil penalty not to exceed a specified amount; providing that penalties do not apply if the person engaged in unlicensed activity within 90 days after the expiration date of the person's license; providing that a person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., knowingly and intentionally forces another person to assist the impersonator in an activity within the scope of duty of a professional licensed under ch. 493, F.S., commits a felony of the third degree; providing that a person who impersonates a security officer or other designated officer during the commission of a felony commits a felony of the second degree; providing that a person who impersonates a security officer or other designated officer during the commission a felony that results in death or serious bodily injury to another human being

commits a felony of the first degree; authorizing a licensed security officer or a licensed security agency manager to detain a person on the premises of a critical infrastructure facility if the security officer has probable cause to believe that the person has committed or is committing a crime and for the purpose of ascertaining the person's identity and the circumstances of the activity that is the basis for the temporary detention; providing that the person may be detained until a responding law enforcement officer arrives at the critical infrastructure facility; requiring the security officer to notify the law enforcement agency as soon as possible; requiring that custody of any person temporarily detained be immediately transferred to the responding law enforcement officer; prohibiting a licensed security officer or security agency manager from detaining a person after the arrival of a law enforcement officer unless the law enforcement officer requests the security officer to assist in detaining the person; authorizing the security officer to search the person detained if the security officer observes that the person temporarily detained is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer, or the detainee admits to the security officer that he or she is armed with a weapon; requiring the security officer to seize any weapon discovered and transfer the weapon to the responding law enforcement officer; defining

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the term "critical infrastructure facility"; providing identification requirements for licensed security officers; amending s. 790.06, F.S.; providing an

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 1646
INTRODUCER:	Senator Latvala
SUBJECT:	Concealed Weapons or Firearms Licenses
DATE:	April 6, 2011
REVISED:	

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

I. Summary:

Senate Bill 1646 exempts certain local officeholders who have valid concealed weapons or firearms licenses from the current restrictions on where concealed weapons or firearms can be carried by licensees. Restrictions would be lifted for places including jails, prisons, courthouses and courtrooms, schools, and airport terminals.

County commissioners, school board members, and county constitutional officers are specified as the officeholders who are exempt under the bill. The exemption applies for as long as the officeholder holds office.

This bill substantially amends section 790.06 of the Florida Statutes.

II. Present Situation:

Concealed Weapons Licensure

The Department of Agriculture and Consumer Services (DACS) is authorized to issue concealed weapon licenses to those applicants that qualify.[1] Concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie but not a machine gun for purposes of the licensure law.[2]

[1] s. 790.06(1), F.S.
[2] *Id.*

According to the FY 2009-2010 statistics, the DACS received 167,240 new licensure applications and 91,963 requests for licensure renewal during that time period.[3]

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

- The name, address, place and date of birth, race, and occupation of the applicant;
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents;
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense;
- A full set of fingerprints;
- Documented proof of completion of a firearms safety and training course; and
- A nonrefundable license fee.[4]

Additionally, the applicant must attest that he or she is in compliance with the criteria contained in subsections (2) and (3) of s. 790.06, F.S.

Subsection (2) of s. 790.06, F.S., requires the DACS to issue the license to carry a concealed weapon, if all other requirements are met, and the applicant:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his

[3] http://licgweb.doacs.state.fl.us/stats/07012009_06302010_cw_annual.pdf; last visited February 11, 2011.
[4] s. 790.06(1)-(5), F.S.

or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;

- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.[5]

The DACS must deny the application if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.[6]

The DACS shall revoke a license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding 3 years.[7]

The DACS shall, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license under this section, until final disposition of the case.[8] The DACS shall suspend a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.[9]

In addition, the DACS is required to suspend or revoke a concealed weapons license if the licensee:

[5] s. 790.06(2), F.S.
[6] s. 790.06(3), F.S.
[7] *Id.*
[8] *Id.*
[9] *Id.*

- Is found to be ineligible under the criteria set forth in subsection (2);
- Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S.;
- Is found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is convicted of a second violation of s. 316.193, F.S., or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state.[10]

Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.[11] Failure to have proper documentation and display it upon demand is a second degree misdemeanor.[12]

- ***A Concealed Carry License does not authorize concealed carry in certain locations.*** A concealed weapon or firearms license does not authorize a person to carry a weapon or firearm in a concealed manner into: any place of nuisance as defined in s. 823.05, F.S.;
- any police, sheriff, or highway patrol station;
- any detention facility, prison, or jail;
- any courthouse;
- any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
- any polling place;
- any meeting of the governing body of a county, public school district, municipality, or special district;
- any meeting of the Legislature or a committee thereof;
- any school, college, or professional athletic event not related to firearms;
- any school administration building;
- any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- any elementary or secondary school facility;
- any career center;

[10] s. 790.06(10), F.S.
[11] s. 790.790.06(1), F.S.
[12] s. 790.06(1), F.S.

- any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
- inside the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
- any place where the carrying of firearms is prohibited by federal law.

Any person who willfully violates any of the above-listed provisions commits a misdemeanor of the second degree.[13]

Certain persons under particular circumstances are exempt from the limitations of the concealed firearm carry licensure requirements in s. 790.06, F.S., when the weapons and firearms are lawfully owned, possessed and used. These persons and circumstances are:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;
- Citizens of this state subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, under chs. 250 and 251, F.S., and under federal laws, when on duty or when training or preparing themselves for military duty;
- Persons carrying out or training for emergency management duties under ch. 252, F.S.;
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of ch. 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;
- Officers or employees of the state or United States duly authorized to carry a concealed weapon;
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state;
- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits;
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;

[13] s. 790.06(12), F.S.

- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place;
- A person firing weapons in a safe and secure indoor range for testing and target practice;
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;
- A person possessing arms at his or her home or place of business; and
- Investigators employed by the public defenders and capital collateral regional counsel of the state, while actually carrying out official duties.[14]

Local officeholders

County constitutional officers are set forth in Article VIII, Section 1(d) of the Florida Constitution as:

> COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a *sheriff*, a *tax collector*, a *property appraiser*, a *supervisor of elections*, and a *clerk of the circuit court*; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds. (emphasis added)

County commissioners are defined as:

> Commissioners. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years.[15]

School Boards and members, as defined in the Florida Constitution are:

> Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.[16]

[14] s. 790.25(3), F.S.
[15] Art. VIII, Sect. 1(e), Florida Constitution.
[16] Art. 9, Sect. 4, Florida Constitution.

The Florida Constitution defines the Superintendent of Schools as:

> Superintendent of schools.—In each school district there shall be a superintendent of schools who shall be elected at the general election in each year the number of which is a multiple of four for a term of four years; or, when provided by resolution of the district school board, or by special law, approved by vote of the electors, the district school superintendent in any school district shall be employed by the district school board as provided by general law.[17]

Recent events have occurred both in Florida and in Arizona in which public officials have been attacked by gunmen.

In December 2010, the Bay County, Florida, School Board meeting turned into a hostage-taking situation when a lone gunman approached the podium while pulling and waving a handgun at the school board members. He allowed the audience and other women to leave the meeting room but the remaining school board members remained in their seats as he pointed the gun at them, at point-blank range. After some minutes and discussion between the man and the board members passed, the man shot the firearm, miraculously missing the school board members as they dove for cover behind the dais. The school district's security officer arrived about the time the man had apparently shot himself. There was no metal detector nor other security measure in place at the entrance to the meeting room at the time of the incident.[18]

In January 2011, an Arizona congresswoman and bystanders at a public event in a supermarket parking lot were gunned down by a lone gunman. The congresswoman was shot in the face at close range but survived. At least 18 people were shot and 6 of them died, including a federal judge and a nine year old girl. The congresswoman had just been sworn in for her third term in Congress after a particularly tough race.[19]

III. Effect of Proposed Changes:

The bill exempts certain local officeholders who have valid concealed weapons or firearms licenses from the current restrictions on where concealed weapons or firearms can be carried by licensees. The exemption applies for as long as the officeholder holds office. County commissioners, school board members and county constitutional officers are specified as the officeholders who are exempt under the bill.

Other Potential Implications:

It should be noted that the locations where concealed carry licensees are not permitted to carry their weapons or firearms include local jails and state prison facilities. These are places where trained law enforcement and correctional officers do not carry firearms inside the compound, among the detainees and inmates.

[17] Art. 9, Sect. 5, Florida Constitution.
[18] Panama City News Herald story, December 16, 2010.
[19] Congresswoman shot in Tucson rampage, The Washington Post, January 9, 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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 1790
INTRODUCER:	Senator Storms
SUBJECT:	Driving Under the Influence
DATE:	March 29, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Spalla	TR	**Favorable**
2.	Dugger	Cannon	CJ	**Pre-Meeting**
3.			JU	
4.				
5.				
6.				

I. Summary:

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

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

II. Present Situation:

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

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

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

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

III. Effect of Proposed Changes:

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[1] Telephone communications with the General Counsel and staff of the Department of Highway Safety and Motor Vehicles on March 18, 2011, and March 21, 2011.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 1808
INTRODUCER:	Senator Diaz de la Portilla
SUBJECT:	Assault or Battery
DATE:	March 29, 2011
REVISED:	04/05/11

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

I. Summary:

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

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

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

II. Present Situation:

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

[1] See s. 784.03(1), F.S. This offense is committed when a person actually and intentionally touches or strikes another person against the will of the other, or intentionally causes bodily harm to another person. *Id.* A first degree misdemeanor is punishable by up to one year in a county jail and a fine of up to $1,000 may also be imposed. ss. 775.082 and 775.083, F.S.

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

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

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

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

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

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

[5] Section 784.07(1)(d), F.S., defines the term "law enforcement officer" to include a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, F.S., and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Parole Commission; a federal law enforcement officer as defined in s. 901.1505, F.S.; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement.

[6] Section 784.07(1)(b), F.S., defines the term "firefighter" to mean any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires.

[7] Section 790.001(6), F.S., defines the term "firearm" to mean any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

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

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

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

III. Effect of Proposed Changes:

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

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

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

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

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

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

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

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

minimum term under s. 784.07(3)(b), F.S., though the new mandatory minimum terms are significantly longer.[12]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates 20 and 25-year mandatory minimum terms of imprisonment.

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates the bill would have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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 (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (i) of subsection (2), paragraphs (a), (e), (g), (i), and (j) of subsection (6), paragraph (a) of subsection (8), and paragraph (a) of subsection (10) of section 775.21, Florida Statutes, are amended to read:

775.21 The Florida Sexual Predators Act.—

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

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


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

(6) REGISTRATION.—

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

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

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

a. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the department written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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


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

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

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

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

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

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

3. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

(10) PENALTIES.—

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

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

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

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

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

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

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

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

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

c. Establishes or maintains a residence in this state who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes or similar offense in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 826.04 where the victim is a minor and the defendant is 18 years of age or older; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-

subparagraph; or

d. On or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense:

(I) Section 794.011, excluding s. 794.011(10);

(II) Section 800.04(4)(b) where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;

(III) Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals; or

(IV) Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals.

2. For all qualifying offenses listed in sub-subparagraph (1)(a)1.d., the court shall make a written finding of the age of the offender at the time of the offense.

For each violation of a qualifying offense listed in this subsection, the court shall make a written finding of the age of the victim at the time of the offense. For a violation of s. 800.04(4), the court shall additionally make a written finding indicating that the offense did or did not involve sexual activity and indicating that the offense did or did not involve force or coercion. For a violation of s. 800.04(5), the court shall additionally make a written finding that the offense did or did not involve unclothed genitals or genital area and that the offense did or did not involve the use of force or coercion.

(g) "Internet identifier ~~Instant message name~~" has the same meaning as provided in s. 775.21 ~~means an identifier that allows a person to communicate in real time with another person using the Internet~~.

(2) A sexual offender shall:

(a) Report in person at the sheriff's office:

1. In the county in which the offender establishes or maintains a permanent, temporary, or transient residence within 48 hours after:

a. Establishing permanent, temporary, or transient residence in this state; or

b. Being released from the custody, control, or supervision of the Department of Corrections or from the custody of a private correctional facility; or

2. In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration under this section if the offender is not in the custody or control of, or under the supervision of, the Department of Corrections, or is not in the custody of a private correctional facility.

Any change in the information required to be provided pursuant to paragraph (b), including, but not limited to, any change in the sexual offender's permanent, temporary, or transient residence, name, all ~~any~~ electronic mail addresses ~~address~~ and all Internet identifiers ~~any instant message name~~ required to be provided pursuant to paragraph (4)(d), after the sexual offender reports in person at the sheriff's office, shall be accomplished in the manner provided in subsections (4), (7), and (8).

(b) Provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; occupation and place of employment; address of permanent or legal residence or address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state, address, location or description, and dates of any current or known future temporary residence within the state or out of state; all home telephone numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; all ~~any~~ electronic mail addresses ~~address~~ and all Internet identifiers ~~any instant message name~~ required to be provided pursuant to paragraph (4)(d); date and place of each conviction; and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address. The sexual offender must also produce or provide information about his or her passport, if he or she has a passport, and, if he or she is an alien, must produce or provide information about documents establishing his or her immigration status.

1. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide to the department through the sheriff's office written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the

sexual offender shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. If the sexual offender is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual offender shall also provide to the department through the sheriff's office the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at the sheriff's office, within 48 hours after any change in status. The sheriff shall promptly notify each institution of the sexual offender's presence and any change in the sexual offender's enrollment or employment status.

When a sexual offender reports at the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the offender and forward the photographs and fingerprints to the department, along with the information provided by the sexual offender. The sheriff shall promptly provide to the department the information received from the sexual offender.

(4)(a) Each time a sexual offender's driver's license or identification card is subject to renewal, and, without regard to the status of the offender's driver's license or identification card, within 48 hours after any change in the offender's permanent, temporary, or transient residence or change in the offender's name by reason of marriage or other

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legal process, the offender shall report in person to a driver's license office, and shall be subject to the requirements specified in subsection (3). The Department of Highway Safety and Motor Vehicles shall forward to the department all photographs and information provided by sexual offenders. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles is authorized to release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual offenders as provided in this section and ss. 943.043 and 944.606. A sexual offender who is unable to secure or update a driver's license or identification card with the Department of Highway Safety and Motor Vehicles as provided in subsection (3) and this subsection must also report any change in the sexual offender's permanent, temporary, or transient residence or change in the offender's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the offender resides or is located and provide confirmation that he or she reported such information to Department of Highway Safety and Motor Vehicles.

(d) A sexual offender must register all ~~any~~ electronic mail addresses and Internet identifiers ~~address or instant message name~~ with the department prior to using such electronic mail addresses and Internet identifiers ~~address or instant message name on or after October 1, 2007~~. The department shall establish an online system through which sexual offenders may securely access and update all electronic mail address and Internet identifier ~~instant message name~~ information.

(7) A sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or within 21 days before his or her planned departure date if the intended residence of 7 days or more is outside of the United States. The notification must include the address, municipality, county, ~~and~~ state, and country of intended residence. The sheriff shall promptly provide to the department the information received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, ~~or~~ jurisdiction, or country of residence of the sexual offender's intended residence. The failure of a sexual offender to provide his or her intended place of residence is punishable as provided in subsection (9).

(8) A sexual offender who indicates his or her intent to establish a permanent, temporary, or transient residence in another state, a ~~or~~ jurisdiction other than the State of Florida, or another country and later decides to remain in this state shall, within 48 hours after the date upon which the sexual offender indicated he or she would leave this state, report in person to the sheriff to which the sexual offender reported the intended change of permanent, temporary, or transient residence, and report his or her intent to remain in this state. The sheriff shall promptly report this information to the department. A sexual offender who reports his or her intent to establish a permanent, temporary, or transient


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residence in another state, a ~~or~~ jurisdiction other than the State of Florida, or another country but who remains in this state without reporting to the sheriff in the manner required by this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(14)

(c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which shall be consistent with the reporting requirements of this subsection. Reregistration shall include any changes to the following information:

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

2. If the sexual offender is enrolled, employed, or carrying on a vocation at an institution of higher education in

this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel or houseboat.

4. Any sexual offender who fails to report in person as required at the sheriff's office, or who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence or who fails to report all electronic mail addresses and all Internet identifiers ~~or instant message names~~, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Section 943.04351, Florida Statutes, is amended to read:

943.04351 Search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.—A state agency or governmental

subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement under s. 943.043. The agency or governmental subdivision may conduct the search using the Internet site maintained by the Department of Law Enforcement. Also, a national search must be conducted through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice. This section does not apply to those positions or appointments within a state agency or governmental subdivision for which a state and national criminal history background check is conducted.

Section 4. Subsection (1) of section 943.04354, Florida Statutes, is amended to read:

943.04354 Removal of the requirement to register as a sexual offender or sexual predator in special circumstances.—

(1) For purposes of this section, a person shall be considered for removal of the requirement to register as a sexual offender or sexual predator only if the person:

(a) Was or will be convicted or adjudicated delinquent of a violation of s. 794.011, s. 800.04, s. 827.071, or s. 847.0135(5) or the person committed a violation of s. 794.011, s. 800.04, s. 827.071, or s. 847.0135(5) for which adjudication of guilt was or will be withheld, and the person does not have any other conviction, adjudication of delinquency, or withhold of adjudication of guilt for a violation of s. 794.011, s.

800.04, s. 827.071, or s. 847.0135(5);

(b) Is required to register as a sexual offender or sexual predator solely on the basis of this violation; and

(c) Is not more than 4 years older than the victim of this violation who was 13 ~~14~~ years of age or older but not more than 18 ~~17~~ years of age at the time the person committed this violation.

Section 5. Subsection (2) and paragraph (a) of subsection (3) of section 943.0437, Florida Statutes, are amended to read:

943.0437 Commercial social networking websites.—

(2) The department may provide information relating to electronic mail addresses and Internet identifiers ~~instant message names~~ maintained as part of the sexual offender registry to commercial social networking websites or third parties designated by commercial social networking websites. The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and Internet identifiers ~~instant message names~~ provided by the department.

(3) This section shall not be construed to impose any civil liability on a commercial social networking website for:

(a) Any action voluntarily taken in good faith to remove or disable any profile of a registered user associated with an electronic mail address or Internet identifier ~~instant message name~~ contained in the sexual offender registry.

Section 6. Paragraphs (b) and (d) of subsection (1) and paragraph (a) of subsection (3) of section 944.606, Florida Statutes, are amended to read:

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944.606 Sexual offenders; notification upon release.—

(1) As used in this section:

(b) "Sexual offender" means a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 826.04 where the victim is a minor and the defendant is 18 years of age or older; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection, when the department has received verified information regarding such conviction; an offender's computerized criminal history record is not, in and of itself, verified information.

(d) "Internet identifier ~~Instant message name~~" has the same meaning as provided in s. 775.21 ~~means an identifier that allows a person to communicate in real time with another person using the Internet~~.

(3)(a) The department must provide information regarding any sexual offender who is being released after serving a period of incarceration for any offense, as follows:

1. The department must provide: the sexual offender's name, any change in the offender's name by reason of marriage or other legal process, and any alias, if known; the correctional

facility from which the sexual offender is released; the sexual offender's social security number, race, sex, date of birth, height, weight, and hair and eye color; address of any planned permanent residence or temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any known future temporary residence within the state or out of state; date and county of sentence and each crime for which the offender was sentenced; a copy of the offender's fingerprints and a digitized photograph taken within 60 days before release; the date of release of the sexual offender; all ~~any~~ electronic mail addresses ~~address~~ and all Internet identifiers ~~any instant message name~~ required to be provided pursuant to s. 943.0435(4)(d); all ~~and~~ home telephone numbers ~~number~~ and ~~any~~ cellular telephone numbers; and passport information, if he or she has a passport, and, if he or she is an alien, information about documents establishing his or her immigration status ~~number~~. The department shall notify the Department of Law Enforcement if the sexual offender escapes, absconds, or dies. If the sexual offender is in the custody of a private correctional facility, the facility shall take the digitized photograph of the sexual offender within 60 days before the sexual offender's release and provide this photograph to the Department of Corrections and also place it in the sexual offender's file. If the sexual offender is in the custody of a local jail, the custodian of the local jail shall register the offender within 3 business days after intake of the offender for any reason and upon release, and shall notify the Department of

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Law Enforcement of the sexual offender's release and provide to the Department of Law Enforcement the information specified in this paragraph and any information specified in subparagraph 2. that the Department of Law Enforcement requests.

2. The department may provide any other information deemed necessary, including criminal and corrections records, nonprivileged personnel and treatment records, when available.

Section 7. Paragraphs (a) and (f) of subsection (1), paragraph (a) of subsection (4), and paragraph (c) of subsection (13) of section 944.607, Florida Statutes, are amended to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

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

(a) "Sexual offender" means a person who is in the custody or control of, or under the supervision of, the department or is in the custody of a private correctional facility:

1. On or after October 1, 1997, as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; <u>s. 826.04 where the victim is a minor and the defendant is 18 years of age or older;</u> s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of

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those listed in this paragraph; or

2. Who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard as to whether the person otherwise meets the criteria for registration as a sexual offender.

(f) "Internet identifier ~~Instant message name~~" has the same meaning as provided in s. 775.21 ~~means an identifier that allows a person to communicate in real time with another person using the Internet~~.

(4) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but is not incarcerated must register with the Department of Corrections within 3 business days after sentencing for a registrable offense and otherwise provide information as required by this subsection.

(a) The sexual offender shall provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; all ~~any~~ electronic mail addresses ~~address~~ and all Internet identifiers ~~any instant message name~~ required to be provided pursuant to s. 943.0435(4)(d); permanent or legal residence and address of temporary residence within the state or out of state while the sexual offender is under supervision in this state, including

any rural route address or post office box; if no permanent or temporary address, any transient residence within the state; and address, location or description, and dates of any current or known future temporary residence within the state or out of state. The sexual offender must also produce or provide information about his or her passport, if he or she has a passport, and, if he or she is an alien, must produce or provide information about documents establishing his or her immigration status. The Department of Corrections shall verify the address of each sexual offender in the manner described in ss. 775.21 and 943.0435. The department shall report to the Department of Law Enforcement any failure by a sexual predator or sexual offender to comply with registration requirements.

(13)

(c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which shall be consistent with the reporting requirements of this subsection. Reregistration shall include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence; address, location or description, and dates of any current or known future temporary residence within the state or out of state; all ~~any~~ electronic mail addresses ~~address~~ and all Internet identifiers ~~any instant message name~~ required to be provided pursuant to s.

943.0435(4)(d); date and place of any employment; vehicle make, model, color, and license tag number; fingerprints; and photograph. A post office box shall not be provided in lieu of a physical residential address.

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

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel or houseboat.

4. Any sexual offender who fails to report in person as required at the sheriff's office, or who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence, or who fails to report all electronic mail addresses and all Internet identifiers ~~or instant message names~~, commits a felony of the third degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 8. Subsection (11) of section 947.005, Florida Statutes, is amended to read:

947.005 Definitions.—As used in this chapter, unless the context clearly indicates otherwise:

(11) "Risk assessment" means an assessment completed by a ~~an independent~~ qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child.

Section 9. Section 948.31, Florida Statutes, is amended to read:

948.31 Evaluation and treatment of sexual predators and offenders on probation or community control.—Conditions imposed pursuant to this section do not require oral pronouncement at the time of sentencing and shall be considered standard conditions of probation or community control for offenders specified in this section. The court shall require an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment. If the court determines that a need therefor is established by the evaluation process, the court shall require sexual offender treatment as a term or condition of probation or community control for any person who is required to register as a sexual predator under s. 775.21 or sexual offender under s. 943.0435, s. 944.606, or s. 944.607. Such treatment shall be required to be obtained from a qualified practitioner as defined in s. 948.001. Treatment may not be administered by a qualified practitioner who has been convicted or adjudicated delinquent of committing, or attempting, soliciting, or conspiring to commit, any offense that is listed in s. 943.0435(1)(a)1.a.(I). ~~The court shall~~

~~impose a restriction against contact with minors if sexual offender treatment is recommended.~~ The evaluation and recommendations for treatment of the probationer or community controllee shall be provided to the court for review.

Section 10. Paragraph (a) of subsection (3) of section 985.481, Florida Statutes, is amended to read:

985.481 Sexual offenders adjudicated delinquent; notification upon release.—

(3)(a) The department must provide information regarding any sexual offender who is being released after serving a period of residential commitment under the department for any offense, as follows:

1. The department must provide the sexual offender’s name, any change in the offender’s name by reason of marriage or other legal process, and any alias, if known; the correctional facility from which the sexual offender is released; the sexual offender’s social security number, race, sex, date of birth, height, weight, and hair and eye color; address of any planned permanent residence or temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any known future temporary residence within the state or out of state; date and county of disposition and each crime for which there was a disposition; a copy of the offender’s fingerprints and a digitized photograph taken within 60 days before release; the date of release of the sexual offender; all ~~and~~ home telephone numbers ~~number~~ and ~~any~~ cellular telephone numbers; and passport information, if he or she has a

passport, and, if he or she is an alien, information about documents establishing his or her immigration status ~~number~~. The department shall notify the Department of Law Enforcement if the sexual offender escapes, absconds, or dies. If the sexual offender is in the custody of a private correctional facility, the facility shall take the digitized photograph of the sexual offender within 60 days before the sexual offender's release and also place it in the sexual offender's file. If the sexual offender is in the custody of a local jail, the custodian of the local jail shall register the offender within 3 business days after intake of the offender for any reason and upon release, and shall notify the Department of Law Enforcement of the sexual offender's release and provide to the Department of Law Enforcement the information specified in this subparagraph and any information specified in subparagraph 2. which the Department of Law Enforcement requests.

2. The department may provide any other information considered necessary, including criminal and delinquency records, when available.

Section 11. Paragraph (a) of subsection (4) and paragraph (b) of subsection (13) of section 985.4815, Florida Statutes, are amended to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

(4) A sexual offender, as described in this section, who is under the supervision of the department but who is not committed must register with the department within 3 business days after adjudication and disposition for a registrable offense and otherwise provide information as required by this subsection.

(a) The sexual offender shall provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; permanent or legal residence and address of temporary residence within the state or out of state while the sexual offender is in the care or custody or under the jurisdiction or supervision of the department in this state, including any rural route address or post office box; if no permanent or temporary address, any transient residence; address, location or description, and dates of any current or known future temporary residence within the state or out of state; passport information, if he or she has a passport, and, if he or she is an alien, information about documents establishing his or her immigration status; and the name and address of each school attended. The department shall verify the address of each sexual offender and shall report to the Department of Law Enforcement any failure by a sexual offender to comply with registration requirements.

(13)

(b) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which shall be consistent with the reporting requirements of this subsection. Reregistration shall include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence; address, location or

description, and dates of any current or known future temporary residence within the state or out of state; passport information, if he or she has a passport, and, if he or she is an alien, information about documents establishing his or her immigration status; name and address of each school attended; date and place of any employment; vehicle make, model, color, and license tag number; fingerprints; and photograph. A post office box shall not be provided in lieu of a physical residential address.

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

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

4. Any sexual offender who fails to report in person as

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required at the sheriff's office, or who fails to respond to any address verification correspondence from the department within 3 weeks after the date of the correspondence, commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

Section 12. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 13. This act shall take effect upon becoming a law.

================ 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 offenders and predators; amending s. 775.21, F.S.; replacing the definition of the term "instant message name" with the definition of the term "Internet identifier"; providing that voluntary disclosure of specified information waives a disclosure exemption for such information; conforming provisions; requiring disclosure of passport and immigration status information; requiring that a sexual predator who is unable to secure or update a driver's license or identification card within a specified period must report specified information to

970 the local sheriff's office within a specified period
971 after such change with confirmation that he or she
972 also reported such information to the Department of
973 Highway Safety and Motor Vehicles; revising reporting
974 requirements if a sexual predator plans to leave the
975 United States for more than a specified period;
976 amending s. 943.0435, F.S.; replacing the definition
977 of the term "instant message name" with the definition
978 of the term "Internet identifier"; conforming
979 provisions; requiring disclosure of passport and
980 immigration status information; requiring that a
981 sexual predator who is unable to secure or update a
982 driver's license or identification card within a
983 specified period must report specified information to
984 the local sheriff's office within a specified period
985 of such change with confirmation that he or she also
986 reported such information to the Department of Highway
987 Safety and Motor Vehicles; providing additional
988 requirements for sexual offenders intending to reside
989 outside of the United States; amending s. 943.04351,
990 F.S.; requiring a specified national search of
991 registration information regarding sexual predators
992 and sexual offenders prior to appointment or
993 employment of persons by state agencies and
994 governmental subdivisions; amending s. 943.04354,
995 F.S.; revising the age range applicable to provisions
996 allowing removal of the requirement to register as a
997 sexual offender or sexual predator in certain
998 circumstances; amending s. 943.0437, F.S.; replacing


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the definition of the term "instant message name" with the definition of the term "Internet identifier"; conforming provisions; amending ss. 944.606 and 944.607, F.S.; replacing the definition of the term "instant message name" with the definition of the term "Internet identifier"; conforming provisions; requiring disclosure of passport and immigration status information; amending s. 947.005, F.S.; revising the definition of the term "risk assessment"; amending s. 948.31, F.S.; providing that conditions imposed under that section do not require oral pronouncement at the time of sentencing and shall be considered standard conditions of probation or community control for certain offenders; removing a provision prohibiting contact with minors if sexual offender treatment is recommended; amending ss. 985.481 and 985.4815, F.S.; requiring disclosure of passport and immigration status information by certain sexual offenders adjudicated delinquent and certain juvenile sexual offenders; providing severability; 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 1890
INTRODUCER:	Senator Storms
SUBJECT:	Sexual Predator Identifiers
DATE:	March 30, 2011
REVISED:	

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

I. Summary:

This bill amends statutes concerning reporting requirements of sexual predators and sexual offenders. The most significant change requires these persons to report more types of identifiers used for activities on the Internet than are currently required. The current requirement to report any "instant message name" applies only to communications in real time, such as instant messaging and Internet chats. The new requirement to report any "Internet identifier" includes communications that are not in real time, such as posting on a social networking site or on a newspaper comment board. Therefore, the bill will result in law enforcement having more information to identify sexual predators and sexual offenders if they engage in unlawful activities on the Internet.

The bill also creates the offense of "unlawful electronic communication between minors" (sexting) in new s. 847.0141, F.S. "Sexting" is a term that describes the act of sending sexually explicit messages, photographs, or videos of oneself or another person by electronic means. The bill prohibits a minor from transmitting a video depiction of himself or herself that depicts nudity and that is harmful to minors, or from possessing a visual depiction of another minor that depicts nudity and that is harmful to minors. A minor who commits sexting is subject to penalties that are less than the punishment that could be assessed for the same conduct under existing law.

This bill substantially amends sections 775.21, 943.0435, 943.0437, 944.606, and 944.607, of the Florida Statutes. The bill creates section 847.0141, of the Florida Statutes.

II. Present Situation:

Sexual Predator and Sexual Offender Reporting Requirements
The distinction between a sexual predator and a sexual offender is based on the offense, the date the offense occurred or when sanctions were completed, and whether the person was previously convicted of a sexual offense. Conviction of committing or attempting to commit any of the following offenses would require registration as either a sexual offender or a sexual predator[1]:

- Kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent (ss. 787.01, 787.02, and 787.025(2)(c), F.S.).
- Sexual battery [s. 794.011, F.S., except false accusation of another under subsection (10)].
- Sexual activity by a person who is 24 years old or older with a minor who is 16 or 17 years old (s. 794.05, F.S.).
- Procuring a person under the age of 18 for prostitution (s. 796.03, F.S.).
- Selling or buying of minors into sex trafficking or prostitution (s. 796.035, F.S.).
- Lewd or lascivious offenses upon or in the presence of a person under the age of 16 (s. 800.04, F.S.).
- Lewd or lascivious offenses upon an elderly or disabled person (s. 825.1025, F.S.).
- Enticing, promoting, or possessing images of sexual performance by a child (s. 827.071, F.S.).
- Distribution of obscene materials to a minor (s. 847.0133, F.S.).
- Computer pornography [s. 847.0135, F.S., except owners or operators of computer services liable under subsection (6)].
- Selling or buying of minors for child pornography (s. 847.0145, F.S.).
- Sexual misconduct by a Department of Juvenile Justice (DJJ) employee with a juvenile offender (s. 985.701(1), F.S.).
- Violating a similar law of another jurisdiction.

Designation as a sexual predator requires either: (1) conviction of one of the enumerated offenses after having previously been convicted of one of the offenses, or (2) conviction of a capital, life, or first-degree felony violation of s. 787.01, F.S. or s. 787.02, F.S.; where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S.; s. 800.04, F.S.; s. 847.0145, F.S.; or conviction for violating a similar law of another jurisdiction. Sexual predator status can only be conferred as the result of offenses committed on or after October 1, 1993.

The requirement to register as a sexual offender is triggered by conviction of committing or attempting, soliciting, or conspiring to commit one of the offenses, transmission of child pornography by electronic device (s. 847.0137, F.S.), or transmission of material harmful to minors to a minor by electronic device (s. 847.0138, F.S.). It applies only when the offender was released from the sanction for the offense on or after October 1, 1997.

[1] The criteria for designation as a sexual predator is found in s. 775.21, F.S. The criteria for registration as a sexual offender is found in s. 943.0435, F.S.

A sexual predator or sexual offender is required to comply with a number of statutory requirements.[2] Those in custody will be registered by the agency by which they are held. Persons under the supervision of the Department of Corrections (DOC) or the Department of Juvenile Justice (DJJ) must register with the respective department. All others must register at the county sheriff's office within 48 hours of either: (1) being designated as a sexual predator; (2) convicted of an offense that requires registration as a sexual offender; or (3) establishing a residence in the county.

A variety of personally identifying information must be provided to the sheriff's office as part of the registration process. This information includes the address of a legal residence or temporary residence or the address, location or description of a transient residence, any electronic mail address, and any instant message name.

The sheriff's office provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database. The offender or predator must also register at a driver's license office within 48 hours of the initial registration at the sheriff's department.

Both sexual predators and sexual offenders must report any change of permanent, temporary, or transient residence within the state to the driver's license office within 48 hours. If a new permanent, temporary, or transient residence is not established, the sheriff's office must be given the address for the residence or other location that will be occupied until a new residence is established. Transient residence is defined as:

> A place or county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

The predator or offender must also report his or her intent to establish a residence in another state or jurisdiction within 48 hours of the intended change. However, this notice must be given in person to the county sheriff, not to the driver's license office.

Predators and offenders are also required to keep information concerning electronic mail addresses and instant message names in the same manner as is required for a change of residence. This includes providing the information within 48 hours of establishing or changing an electronic mail address or instant message name.

The county sheriff or municipal police chief must notify child care centers and schools within a one-mile radius of the sexual predator's permanent, temporary, or transient residence within 48 hours of the notification by the predator. In addition, the sheriff or police chief is required to notify the community of the presence of the predator in an appropriate manner, which is often by posting on the sheriff's website. Both notices must include the predator's address, including the name of the municipality or county.

[2] The specific offender reporting requirements and law enforcement reporting and notification requirements are found in ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S.

The DOC and DJJ are required to provide FDLE with information including the offender's intended residence address, if known six months prior to release from custody or commitment. The agencies must also provide FDLE with the current or intended permanent, temporary, or transient address, if known during the time of incarceration or residential commitment.

Sexting

Florida law currently contains various statutes that prohibit the creation, possession, and transmission of sexual materials depicting minors. Some of these laws address photographs or videos that do not rise to the level of child pornography, which is statutorily defined as "any image depicting a minor engaged in sexual conduct."[3] Section 847.001(16), F.S., defines "sexual conduct" as:

> [A]ctual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."[4]

Sexual Performance by a Child

Section 827.071(5), F.S., provides that it is a third degree felony for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The statute specifies that the possession of each photograph, motion picture, exhibition, show, representation, or presentation is a separate offense.

Prohibition of Acts Relating to Obscene and Lewd Materials

Section 847.011(1)(a), F.S., provides that it is a first degree misdemeanor for a person to knowingly sell, lend, give away, distribute, transmit, show, or transmute, or have in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, or transmute, specified obscene items, including pictures, photographs, and images. However, s. 847.011(1)(c), F.S., provides that it is a third degree felony if the violation of s. 847.011(1)(a) or (2), F.S., is based on materials that depict a minor[5] engaged in any act or conduct that is harmful to minors.[6]

Section 847.011(2), F.S., provides that it is a second degree misdemeanor for a person to have in his or her possession, custody, or control specified obscene items, including pictures, photographs, and images, without the intent to sell, etc., such items.

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[3] See ss. 775.0847(1)(b) and 847.001(3), F.S.

[4] "Sexual conduct" is defined identically in ss. 775.0847 and 827.071, F.S. It has a more limited definition in s. 365.161, F.S., which relates to obscene or indecent communications made by a telephone that describe certain sexual acts.

[5] The term "minor" is defined as "any person under the age of 18 years." Section 847.001(8), F.S.

[6] The term "harmful to minors" is defined in s. 847.001(6), F.S. For a more detailed definition, see the "Effect of Proposed Changes" section of this bill analysis.

Protection of Minors
Section 847.0133, F.S., provides that it is a third degree felony for a person to knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene[7] material to a minor. "Material" includes pictures, photographs, and images.

Computer Pornography
Section 847.0135(2), F.S., provides that it is a third degree felony for a person to:

- Knowingly compile, enter into, or transmit the visual depiction of sexual conduct with a minor by use of computer;
- Make, print, publish, or reproduce by other computerized means the visual depiction of sexual conduct with a minor;
- Knowingly cause or allow to be entered into or transmitted by use of computer the visual depiction of sexual conduct with a minor; or
- Buy, sell, receive, exchange, or disseminate the visual depiction of sexual conduct with a minor.

Transmission of Pornography
Section 847.0137(2), F.S., provides that any person in this state who knew or reasonably should have known that he or she was transmitting child pornography to another person in this state or another jurisdiction commits a third degree felony.

Transmission of Material Harmful to Minors
Section 847.0138(2), F.S., provides that any person who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors to a specific individual known or believed by the defendant to be a minor commits a third-degree felony.

Both minors and adults can be charged with any of the offenses described above.

Sexting
"Sexting" is a recently coined term that combines the words "sex" and "texting."[8] It is used to describe the act of sending sexually explicit messages, photographs, or videos of oneself or another person by electronic means. As the name suggests, "sext" messages are most commonly sent by a cell phone text message. Media reports and other studies indicate that sexting is a growing trend among teenagers. In a 2008 survey of 1,280 teenagers and young adults of both sexes, 20 percent of teens (ages 13-19) and 33 percent of young adults (ages

[7] Section 847.001(10), F.S., defines the term "obscene" as the status of material which the average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest; depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and taken as a whole, lacks serious literary, artistic, political, or scientific value. A mother's breastfeeding of her baby is not under any circumstance "obscene."
[8] Stacey Garfinkle, Sex + Texting = Sexting, *The Washington Post*, Dec. 10, 2008, available at http://voices.washingtonpost.com/parenting/2008/12/sexting.html (last visited March 7, 2011).

20-26) had sent nude or semi-nude photographs of themselves electronically.[9] Additionally, 39 percent of teens and 59 percent of young adults had sent sexually explicit text messages.[10]

There is no Florida law that specifically addresses sexting. Under current law, a person who knowingly sends certain sexually explicit images of a minor to another person, or a person who knowingly receives such images, could be charged with any number of different offenses that relate to sexual material depicting minors. For example, in 2007, 18-year-old Phillip Alpert was arrested and charged with transmitting child pornography (among other things) after he sent a nude photo of his 16-year-old girlfriend to her friends and family after they had an argument. In total, Alpert was charged with 72 offenses, sentenced to five years of probation, and was required to register as a sexual offender.[11]

Similarly, in other jurisdictions, some law enforcement officers and district attorneys have begun prosecuting teens who "sext" under laws generally reserved for producers and distributors of child pornography. For example, in Pennsylvania, a district attorney gave 17 students who were either pictured in images or found with "provocative" images on their cell phones the option of either being prosecuted under child pornography laws or agreeing to participate in a five-week after school program and probation.[12] Similar incidents have occurred in other states, e.g., Massachusetts, Ohio, and Iowa.[13]

As a result, state legislatures have considered making laws that downgrade the charges for sexting from felonies to misdemeanors. For example, in 2009, Vermont and Utah passed laws that downgraded the penalties for minors and first-time perpetrators of sexting.[14]

III. Effect of Proposed Changes:

Reporting Requirements for Sexual Predators and Sexual Offenders

Internet identifiers

The bill replaces the term "instant message name" with "Internet identifier" wherever it is used in relation to sexual predators or sexual offenders. "Internet identifier" encompasses more Internet-related activity than the current "instant message name," so this will require sexual predators and sexual offenders to report more types of identifiers used for activities on the Internet than are currently required. The terms are defined as follows:

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[9] National Campaign to Prevent Teen and Unplanned Pregnancy, Sex and Tech: Results from a Survey of Teens and Young Adults, 1, available at http://www.thenationalcampaign.org/sextech/PDF/SexTech_Summary.pdf (last visited March 7, 2011).

[10] *Id.*

[11] Vicki Mabrey and David Perozzi, 'Sexting': Should Child Pornography Laws Apply?, *ABC NEWS* (Apr. 1, 2010), available at http://abcnews.go.com/Nightline/phillip-alpert-sexting-teen-child-porn/story?id=10252790 (last March 2, 2011); Deborah Feyerick and Sheila Steffen, 'Sexting' lands teen on sex offender list, *CNN* (Apr. 8, 2009), available at http://www.cnn.com/2009/CRIME/04/07/sexting.busts/index.html (last visited March 7, 2011).

[12] Amanda Lenhart, Teens and Sexting: How and why minor teens are sending sexually suggestive nude or nearly nude images via text messaging, *Pew Research Ctr*., 3 (Dec. 15, 2009), available at http://www.pewinternet.org/~/media//Files/Reports/2009/PIP_Teens_and_Sexting.pdf (last visited March 7, 2011).

[13] *Id.*; *see also* Mabrey and Perozzi, *supra* note 10.

[14] Lenhart, *supra* note 11, at 3.

- In the current statute, an "instant message name" is "an identifier that allows a person to communicate in real time with another person using the Internet."
- In the bill, an "Internet identifier" is "any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include date of birth, social security number, or Personal Identification Numbers (PIN)."[15]

The current requirement to report any "instant message name" applies only to communications in real time, such as instant messaging and Internet chats. The new requirement to report any "Internet identifier" includes communications that are not in real time, such as posting on a social networking site or on a newspaper comment board. It is also expected that it will include any future advancements in Internet communications. Therefore, the bill will result in law enforcement having more information to identify sexual predators and sexual offenders who engage in unlawful activities on the Internet.

The bill replaces the current requirement that a sexual predator or sexual offender report an instant message name with the new requirement to report an Internet identifier in the following places:

- Section 775.21, F.S. (the Florida Sexual Predators Act) in Section 1 of the bill.
- Section 943.0435, F.S. (sexual offenders required to register with FDLE) in Section 3 of the bill.
- Section 943.0437, F.S. (commercial social networking websites) in Section 4 of the bill.
- Section 944.607, F.S. (notification to FDLE of information on sexual offenders) in Section 5 of the bill.
- Section 944.606, F.S. (notification upon release of sexual offenders) in Section 6 of the bill.

Reporting of Change of Address

Sections 775.21(6)(g)1. and 943.0435(4)(a), F.S., require sexual predators and sexual offenders, respectively, to report any change of permanent, temporary, or transient residence within the state to the driver's license office within 48 hours. Sections 1 and 3 of the bill state that a predator or offender does not violate this provision if he or she reports the change of address to the local sheriff's office within 48 hours after the change, along with proof of also promptly reporting the change to the driver's license office. The purpose of this provision is unclear, but it may be intended to allow compliance by a reporting individual when he or she moves at a time that the driver's license office will be closed, such as the beginning of a holiday weekend.

Notification Before Establishing Residence in Another State or Jurisdiction

Currently, a predator or offender must give in-person notification to the county sheriff of his or her intent to establish a residence in another state or jurisdiction within 48 hours of the intended change. Section 1 of the bill amends s. 775.21(6)(i), F.S., to require that a sexual predator give this notification within 21 days before the planned departure date if he or she intends to reside outside of the United States for 7 days or more. This means that the offender can give notice at any time from 21 days before departure up until the actual departure.

[15] FDLE recommends insertion of language providing that the voluntary use of a birth date, social security number, or PIN as an Internet identifier constitutes a waiver of the right of non-disclosure of such information. *See* Florida Department of Law Enforcement Analysis of Senate Bill 1890, March 25, 2011, p. 2.

Sexting

The bill creates the offense of "unlawful electronic communication between minors" (sexting) in new s. 847.0141, F.S. A minor who commits sexting is subject to penalties that are less than the punishment that could be assessed for the same conduct under existing law. Also, a conviction of sexting would not result in the requirement to register as a sexual offender or to comply with existing residency restriction laws or other laws that apply to persons who are convicted of certain sexual offenses.

The new offense of sexting can occur in two different ways:

- A minor commits the offense of sexting when he or she intentionally or knowingly uses an electronic communication device to transmit, distribute or display a visual depiction of himself or herself which depicts nudity and is harmful to minors; or
- A minor commits the offense of sexting when he or she intentionally or knowingly possesses a visual depiction of another minor which depicts nudity and is harmful to minors. However, a minor does not commit this possession offense if he or she: (1) did not solicit the visual depiction; (2) took reasonable steps to destroy or eliminate the visual depiction or report it to his or her parent or guardian or to a school or law enforcement official; and (3) did not transmit or distribute the visual depiction to a third party.

The term "nudity" is defined in s. 847.001(9), F.S., to mean:

> [T]he showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding.

Section 847.001(6), F.S., defines "harmful to minors" as:

> [A]ny reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:
>
> (a) Predominantly appeals to a prurient, shameful, or morbid interest;
>
> (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
>
> (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.
>
> A mother's breastfeeding of her baby is not under any circumstance "harmful to minors."

The bill provides the following graduated punishment schedule for a violation of sexting:

- A first sexting violation is a noncriminal violation, punishable by eight hours of community service or a $60 fine if ordered by the court in lieu of community service. The court may also order the minor to participate in suitable training concerning such offenses and prohibit the use or possession of electronic devices.[16]
- A sexting violation that occurs after being found to have committed a noncriminal violation for sexting is a second degree misdemeanor. A second degree misdemeanor is punishable by a jail term of not more than 60 days and may include a fine of not more than $500.[17] The court is also required to order suitable training for such offenses and to prohibit the use or possession of electronic devices.
- A sexting violation that occurs after being found to have committed a second degree misdemeanor violation for sexting is a first degree misdemeanor. A first degree misdemeanor is punishable by a jail term of not more than one year and may include a fine of not more than $1,000.[18] The court is also required to order either suitable training for such offenses or counseling, and to prohibit the use or possession of electronic devices.
- A sexting violation that occurs after being found to have committed a first degree misdemeanor violation for sexting is an unranked third degree felony. A third-degree felony is punishable by state imprisonment for not more than five years and may include a fine of not more than $5,000.[19] However, because the felony is unranked, the offender may be sentenced to a term of probation under supervision by the Department of Corrections.[20] In addition, the court must order a mental health evaluation by a qualified practitioner as defined in s. 948.001, F.S. The court must also order treatment if it is recommended by the qualified practitioner.

A law enforcement officer who arrests any person for sexting must seize the prohibited material and keep it until the court's sentence. In all cases, a sentence for committing sexting requires the court to authorize the law enforcement agency to destroy the prohibited material.

The bill specifies that the sexting provisions do not prohibit the prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking under s. 784.048, F.S.

The bill is substantially similar to CS/SB 2560 which passed the Senate last year. According to FDLE's analysis of that bill, the minor will not have an FDLE record after a first offense because it is a noncriminal violation. Therefore, if the offenses occur in different jurisdictions, prosecutors may be unaware of a previous noncriminal violation and the minor may not be charged with the proper offense.[21]

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[16] The bill includes, but is not limited to, cellular telephones, cameras, computers, or other electronic media devices.
[17] Sections 775.082 and 775.083, F.S.
[18] *Id.*
[19] Sections 775.082 and 775.083, F.S.
[20] "Unranked" is a descriptive term for a noncapital felony that is not specifically ranked in the offense severity ranking chart in s. 921.0022, F.S. If the felony is not ranked in the chart, it is ranked pursuant to s. 921.0023, F.S., based on its felony degree. An unranked third degree felony is a Level 1 offense. *Id.* A first-time offender convicted of only the unranked third degree felony would score a nonprison sanction as the lowest permissible sentence. Section 921.0024, F.S. Further, in this first-time offender scenario, a non prison sanction would be required unless the sentencing court made written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.
[21] Florida Department of Law Enforcement, Senate Bill 2560 Relating to Sexting (Mar. 17, 2010).

Under the bill, the offense of sexting and its reduced penalties do not include the conduct of a minor who re-transmits a sexted photograph or video. Therefore, the state attorney would continue to have discretion in the prosecution of such conduct.

Severability Clause
Section 7 of the bill is a severability clause providing that a finding that any portion of the bill is found to be invalid will not affect the validity of any other portion of the bill.

Effective Date
Section 8 of the bill provides that it will take effect on July 1, 2011. In its analysis, FDLE requests that the date be changed to February 1, 2012, to allow time for it to meet the requirements.[22]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There appears to be no private sector fiscal impact.

C. Government Sector Impact:

FDLE reports that changes to the sexual offender/sexual predator reporting requirements will require a non-recurring expenditure of $27,725.

The Criminal Justice Impact Conference assessed Senate Bill 888, a similar bill concerning the sexting provisions of this bill, as having an insignificant fiscal impact.

[22] *Id.*, note 12 on p. 4.

VI. Technical Deficiencies:

- The bill should be amended throughout to require reporting of "all" Internet identifiers rather than "any" Internet identifiers wherever such reference is made in the bill.

- Lines 156-162 and 466-471 should be amended to clarify the intent of the provision regarding satisfaction of reporting requirements by reporting a change of address to the sheriff's office with proof of promptly reporting the change to the driver's license office.

- On line 466, the reference to "predator" should be changed to "offender," because it is in the statute concerning sexual offender reporting requirements.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.