

CS/SB 498 by **CJ, Lynn**; (Compare to CS/H 0233) Substance Abuse Education and Intervention Programs

SB 882 by **Dean**; (Identical to H 4093) Court Costs

SJR 408 by **Simmons**; (Identical to H 0345) Revising Age Limits for Judges and Justices

CS/SB 488 by **CA, Rich (CO-INTRODUCERS) Gaetz, Sobel**; (Compare to H 0527) Animal Control or Cruelty Ordinances

CS/SB 872 by **CJ, Fasano**; (Similar to CS/H 0667) Murder

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

**BUDGET SUBCOMMITTEE ON CRIMINAL AND CIVIL
JUSTICE APPROPRIATIONS**
Senator Fasano, Chair
Senator Joyner, Vice Chair

MEETING DATE: Tuesday, January 31, 2012
TIME: 8:00 —9:45 a.m.
PLACE: *Mallory Horne Committee Room, 37 Senate Office Building*

MEMBERS: Senator Fasano, Chair; Senator Joyner, Vice Chair; Senators Bennett, Evers, Smith, Storms, and Thrasher

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|--|---|
| 1 | CS/SB 498 Criminal Justice / Lynn (Compare CS/H 233) | Substance Abuse Education and Intervention Programs; Providing that probation supervision services for defendants found guilty of certain misdemeanor controlled substance offenses may be provided by licensed substance abuse education and intervention programs; authorizing certain entities providing probation services to provide licensed substance abuse education and intervention programs; requiring private entities providing such programs to contract with the county and comply with other applicable provisions, etc. | CJ 12/07/2011 Fav/CS JU 01/19/2012 Favorable BJA 01/31/2012 BC |
| 2 | SB 882 Dean (Identical H 4093) | Court Costs; Repealing provisions which prohibits the Supreme Court from taxing the costs of copies of records against the losing party under certain circumstances, etc. | JU 01/19/2012 Favorable BJA 01/31/2012 BC |
| 3 | SJR 408 Simmons (Identical HJR 345) | Revising Age Limits for Judges and Justices; Proposing an amendment to the State Constitution to increase the age after which a justice or judge may no longer serve in a judicial office. | JU 01/19/2012 Favorable BJA 01/31/2012 BC |

COMMITTEE MEETING EXPANDED AGENDA

Budget Subcommittee on Criminal and Civil Justice Appropriations
Tuesday, January 31, 2012, 8:00 —9:45 a.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|------------------|
| 4 | CS/SB 488 Community Affairs / Rich (Compare H 527) | Animal Control or Cruelty Ordinances; Authorizing a county or municipality enacting an ordinance relating to animal control or cruelty to impose a specified surcharge on the civil penalty for violations of the ordinance; specifying use of the proceeds of the surcharge; prohibiting the governing body of a county or municipality from charging owners of animals more than a certain amount for the spaying or neutering of their animals in specified circumstances; authorizing the animal control authority to allocate certain excess funds to the program to spay and neuter cats and dogs; providing for construction, etc. | |
| | | CA 12/05/2011 Temporarily Postponed CA 01/12/2012 Fav/CS BJA 01/31/2012 BC | |
| 5 | CS/SB 872 Criminal Justice / Fasano (Similar CS/H 667) (If Received) | Murder; Providing that the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, the offense of aggravated fleeing or eluding with serious bodily injury or death, is murder of a specified degree, dependent upon certain circumstances; revising provisions of the offense severity ranking chart of the Criminal Punishment Code to conform to changes made by the act, etc. | |
| | | CJ 01/25/2012 Fav/CS BC | |
| <hr/> <p>Bills which do not have a final action may be carried over to the Wednesday, February 1, 2012 meeting.</p> <hr/> | | | |
| 6 | Review and Discussion of Fiscal Year 2012-13 Budget Issues relating to: | | |

COMMITTEE MEETING EXPANDED AGENDA

Budget Subcommittee on Criminal and Civil Justice Appropriations
Tuesday, January 31, 2012, 8:00 —9:45 a.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---------------------------------|--|------------------|
| | | <p>Department of Legal Affairs Department of Corrections Department of Law Enforcement Florida Parole Commission Department of Juvenile Justice Supreme Court District Court of Appeal Trial Courts Judicial Qualifications Commission Justice Administrative Commission Guardian Ad Litem Clerk of Courts State Attorneys Public Defenders Appellate Public Defenders Capital Collateral Regional Counsels Regional Conflict Counsels</p> | |
| 7 | Other Related Meeting Documents | | |

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 Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: CS/SB 498

INTRODUCER: Criminal Justice and Senator Lynn

SUBJECT: Substance Abuse Education and Intervention Programs

DATE: January 24, 2012 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------------------|
| 1. | Cellon | Cannon | CJ | Fav/CS |
| 2. | White | Cibula | JU | Favorable |
| 3. | Sadberry | Sadberry | BJA | Pre-meeting |
| 4. | | | BC | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill gives county criminal courts the option of sentencing a defendant found guilty of misdemeanor possession of a controlled substance or drug paraphernalia to a licensed substance abuse education and treatment intervention program as a condition of probation.

The bill also expressly authorizes a licensed substance abuse education and treatment program to provide probation services to those misdemeanor drug offenders who are assigned to the program.

This bill substantially amends section 948.15 of the Florida Statutes.

II. Present Situation:

Florida's Drug Control Strategy, published in 2009, highlights the approach of treating the probation population for substance abuse.¹ Considering research indicating that “over half of all

¹Executive Office of the Governor Office of Drug Control, *Florida's Drug Control Strategy* (2009), <http://drugcontrol.flgov.com/pdfs/DRUGCONTROLSTRATEGY.pdf> (last visited Jan. 10, 2012).

cocaine and heroin is purchased by individuals ... on pretrial release, probation, or parole,”² the report suggests that “a commitment to treatment” of those individuals formally under the control of the criminal justice system may “dramatically reduce the size and profitability of illicit markets by addressing the heaviest consumers.”³ In this way, investments in drug treatments for the probation population are thought to be able to shrink both the supply and demand in drug markets.⁴

Courts rely on existing treatment-based drug court programs, codified in statute, to place misdemeanor drug offenders in substance abuse programs offered by licensed service providers who deliver various licensed service components, including treatment and intervention. In this context, the licensed service provider must qualify for licensure as a service provider under chapter 397, relating to substance abuse services, and abide by the requirements for misdemeanor probation services providers in s. 948.15, F.S.

Substance Abuse Programs and Services

“Substance abuse” is defined as the misuse or abuse of, or dependence on alcohol, illicit drugs, or prescription medications.⁵ Individuals can become “substance abuse impaired” through the use of these substances “in such a manner as to induce mental, emotional, or physical problems and cause socially dysfunctional behavior.”⁶ The Legislature has expressed that an individual progressing along a continuum of misuse, abuse, and dependence has an increased need for substance abuse intervention and treatment to help abate the problem.⁷ Towards this end, “substance abuse programs and services” (also known as “drug control”) have been established, and may include various efforts to limit substance abuse such as prevention, intervention, clinical treatment, recovery support initiatives, and efforts by law enforcement agencies.⁸

A licensed service provider as defined in s. 397.311(17), F.S., is “a public agency under this chapter [ch. 397], a private for-profit or not-for-profit agency ... , a physician or any other private practitioner ... , or a hospital that offers substance abuse services through one or more licensed service components.” Licensed service components include a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and clinical treatment services.⁹ The term “intervention” means structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.¹⁰

The Substance Abuse Program Office of the Department of Children and Family Services (DCF) licenses and regulates programs of all substance abuse providers in the state.¹¹ Licensure and

² *Id.* at 7 (quoting National Research Council. (2001). *Informing America’s Policy on Illegal Drugs: What We Don’t Know Keeps Hurting Us*. Manski, C. F., Pepper, J. V., & Petrie, C. V. (Eds.). Washington, DC: National Academy Press, p. 43.).

³ *Florida’s Drug Control Strategy* (2009), at 7.

⁴ *Id.*

⁵ Section 397.311(36), F.S.

⁶ Section 397.311(14), F.S.

⁷ Section 397.311(36), F.S.

⁸ Section 397.331(1)(b), F.S.

⁹ Section 397.311(18), F.S.

¹⁰ Section 397.311(18)(b), F.S.

¹¹ Authorized by s. 397.321(6), F.S.

other standards for substance abuse services can be found in Chapter 65-D30, F.A.C., including standards for detoxification, aftercare, intervention, prevention, and medication.

From the 2005-2006 fiscal year through the 2010-2011 fiscal year, the number of adults served by “adult substance abuse prevention, evaluation and treatment services” in Florida grew from 102,345 individuals per year to 111,564 individuals per year.¹² During these six years an average of 72 percent of the adults served had successfully completed substance abuse treatment services with no alcohol and other drug use during the month preceding discharge. For the 2009-2010 fiscal year, the DCF began recording another measurement which allows for evaluation of the extent to which treatment facilitates reduced subsequent criminal activity. Specifically, DCF measured the “percent change in the number of adults arrested 30 days prior to admission versus 30 days prior to discharge.”¹³ The findings seem to indicate a decrease in the arrest rate by 35 percent in the 2009-2010 fiscal year, and by 11 percent in the 2010-2011 fiscal year.¹⁴

Treatment-based Drug Court Programs as a Term of Misdemeanor Probation

Any state court having original jurisdiction of criminal actions may hear and determine the question of the probation of a defendant in a criminal case, with or without adjudicating the guilt of the defendant.¹⁵ The court may do so at a time to be determined by the court. Courts determine the terms and conditions of probation. Section 948.03, F.S., lists standard conditions of probation, such as submitting to random drug testing, yet “the enumeration of specific kinds of terms and conditions shall not prevent the court from adding thereto ... as proper.”¹⁶

Treatment-based Drug Court Programs

Treatment-based drug court programs offer a coordinated approach to addressing the more than 60 percent of all cases entering the criminal justice system which have a substance abuse nexus.¹⁷ Because these programs have the most sustained success in reducing substance abuse, they have been described as the “crown jewel” in drug treatment.¹⁸ An individual enrolled in a treatment-based drug court program is “subject to a coordinated strategy developed by a drug court team,” which may include “a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules.”¹⁹ The protocol of sanctions may include placement in a substance abuse treatment program offered by a licensed service provider.²⁰

¹² Florida Department of Children and Families, Data on Adult Substance Abuse Prevention, Evaluation and Treatment Services, Performance Dashboard Application, <http://dcfdashboard.dcf.state.fl.us/> (last visited Jan. 12, 2012).

¹³ E-mail from Sen-Yoni Musingo, Ph.D., Florida Department of Children and Families, to Stephanie Colston, Florida Department of Children and Family Services (Jan. 11, 2012) (on file with the Senate Committee on Judiciary).

¹⁴ *Id.*

¹⁵ Section 948.01, F.S.

¹⁶ Section 948.03(2), F.S.

¹⁷ Bruce D. Grant, Florida Office of Drug Control, *2010 Transition Report* (Nov. 10, 2010), at 7, http://drugcontrol.flgov.com/pdfs/Transition_Report-Nov%2010.pdf (last visited Jan. 12, 2012).

¹⁸ *Id.*

¹⁹ Section 397.334(5), F.S. (Note, “[t]he coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.”).

²⁰ *Id.*

Even before an information has been filed or an indictment has been returned in the circuit court, persons charged with a crime may be eligible for release to certain treatment-based drug court programs.²¹ These programs include the pretrial intervention program provided in s. 948.08, F.S., the misdemeanor pretrial substance abuse education and treatment intervention program provided in s. 948.16, F.S., and the juvenile delinquency pretrial intervention program provided in s. 985.345, F.S.

Postadjudicatory programs are provided under ss. 948.01(7)(a), 948.06, and 948.20, F.S. The sentencing court may place the defendant into a postadjudicatory treatment-based drug court program if:²²

- the defendant’s Criminal Punishment Code scoresheet total sentence points are 60 points or fewer;²³
- the offense is a nonviolent felony;
- the defendant is amenable to substance abuse treatment; and
- the defendant otherwise qualifies under s. 397.334(3), F.S.

The satisfactory completion of a postadjudicatory program is “a condition of the defendant’s probation or community control.”²⁴

Misdemeanor Probation Services

Section 948.15, F.S., provides for misdemeanor probation services. Even though “[a] private entity may not provide probationary or supervision services to felony or misdemeanor offenders sentenced or placed on probation or other supervision by the circuit court,”²⁵ s. 948.15, F.S., is written such that it would apply to private entities. It specifies that a private entity or public entity under the supervision of the board of county commissioners or the court may provide probation services for offenders sentenced by the county court.²⁶ Any private entity providing services for the supervision of misdemeanor probationers must contract with the county in which the services are to be rendered.²⁷

A private entity that provides court-ordered services to offenders and that charges a fee for such services must register with the board of county commissioners in the county in which the services are offered.²⁸ The entity is required to provide the following information for each program it operates:

- The length of time the program has been operating in the county.
- A list of the staff and a summary of their qualifications.
- A summary of the types of services that are offered under the program.

²¹ Section 948.08, F.S. *See also* s. 397.334(5), F.S.

²² Section 948.01(7)(a), F.S.

²³ As calculated under s. 921.0024, F.S.

²⁴ Section 948.01(7)(a), F.S.

²⁵ Section 948.01(1)(a), F.S.

²⁶ Section 948.15(3), F.S.

²⁷ *Id.*

²⁸ Section 948.15(4), F.S.

- The fees the entity charges for court-ordered services and its procedures, if any, for handling indigent offenders.²⁹

The term of probation for a first-degree misdemeanor offense may be for up to one year.³⁰

III. Effect of Proposed Changes:

The bill provides that defendants found guilty of a misdemeanor drug or paraphernalia possession charge under chapter 893, F.S., may be placed by the county criminal court into a “licensed substance abuse education and treatment intervention program” as a condition of probation. The provisions in the bill apply to misdemeanor crimes, not felony crimes.

The bill also provides that a licensed substance abuse education and treatment intervention program may provide any other probation services, beyond the programmatic component, for this particular pool of offenders.

The bill does not appear to limit a county’s options with regard to contract for county court probation supervision services as it is currently set forth in s. 948.15, F.S.

The bill provides an effective date of July 1, 2012.

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:

²⁹ *Id.*

³⁰ Section 948.15(1), F.S.

C. **Government Sector Impact:**

County governments may be affected to the extent that the county chooses to enter into a contract for services with a licensed substance abuse education and intervention program that costs more (or less) than any current contractual obligations for probation services.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

The Legislature may wish to clarify the bill by replacing references to a “licensed substance abuse education and treatment intervention program” with a “substance abuse education and intervention program, licensed under chapter 397.”

VIII. **Additional Information:**

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

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

CS by Criminal Justice on December 7, 2011:

Amendment 192440 deleted Section 1 from the original bill. This eliminated the bill’s amendment of s. 948.03, F.S., which is the felony probation statute. The amendment clarifies that the bill does not apply in felony cases and eliminates potential practitioner confusion.

B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Lynn

591-01567-12

2012498c1

A bill to be entitled

An act relating to substance abuse education and intervention programs; amending s. 948.15, F.S.; providing that probation supervision services for defendants found guilty of certain misdemeanor controlled substance offenses may be provided by licensed substance abuse education and intervention programs; authorizing certain entities providing probation services to provide licensed substance abuse education and intervention programs; requiring private entities providing such programs to contract with the county and comply with other applicable provisions; providing an effective date.

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

Section 1. Section 948.15, Florida Statutes, is amended to read:

948.15 Misdemeanor probation services.—

(1) A defendant ~~Defendants~~ found guilty of a misdemeanor ~~misdemeanors~~ who is ~~are~~ placed on probation shall be under supervision not to exceed 6 months unless otherwise specified by the court. Probation supervision services for a defendant found guilty of a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893 may be provided by a licensed substance abuse education and intervention program, which shall provide substance abuse education and intervention as well as any other terms and conditions of probation. In relation to any offense other than a felony in which the use of

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

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alcohol is a significant factor, the period of probation may be up to 1 year.

(2) A private entity or public entity, including a licensed substance abuse education and intervention program, under the supervision of the board of county commissioners or the court may provide probation services and licensed substance abuse education and treatment intervention programs for offenders sentenced by the county court.

(3) Any private entity, including a licensed substance abuse education and intervention program, providing services for the supervision of misdemeanor probationers must contract with the county in which the services are to be rendered. In a county having ~~with~~ a population of fewer ~~less~~ than 70,000, the county court judge, or the administrative judge of the county court in a county that has more than one county court judge, must approve the contract. Terms of the contract must state, but are not limited to:

(a) The extent of the services to be rendered by the entity providing supervision or rehabilitation.

(b) Staff qualifications and criminal record checks of staff in accordance with essential standards established by the American Correctional Association as of January 1, 1991.

(c) Staffing levels.

(d) The number of face-to-face contacts with the offender.

(e) Procedures for handling the collection of all offender fees and restitution.

(f) Procedures for handling indigent offenders which ensure placement irrespective of ability to pay.

(g) Circumstances under which revocation of an offender's

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59 probation may be recommended.

60 (h) Reporting and recordkeeping requirements.

61 (i) Default and contract termination procedures.

62 (j) Procedures that aid offenders with job assistance.

63 (k) Procedures for accessing criminal history records of
64 probationers.

65
66 In addition, the entity shall supply the chief judge's office
67 with a quarterly report summarizing the number of offenders
68 supervised by the private entity, payment of the required
69 contribution under supervision or rehabilitation, and the number
70 of offenders for whom supervision or rehabilitation will be
71 terminated. All records of the entity must be open to inspection
72 upon the request of the county, the court, the Auditor General,
73 the Office of Program Policy Analysis and Government
74 Accountability, or agents thereof.

75 (4) A private entity that provides court-ordered services
76 to offenders and that charges a fee for such services must
77 register with the board of county commissioners in the county in
78 which the services are offered. The entity shall provide the
79 following information for each program it operates:

80 (a) The length of time the program has been operating in
81 the county.

82 (b) A list of the staff and a summary of their
83 qualifications.

84 (c) A summary of the types of services that are offered
85 under the program.

86 (d) The fees the entity charges for court-ordered services
87 and its procedures, if any, for handling indigent offenders.

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88 (5) The private entity, including a licensed substance
89 abuse education and intervention program, providing misdemeanor
90 supervision services ~~must shall~~ also comply with all other
91 applicable provisions of law.

92 Section 2. This act shall take effect July 1, 2012.

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

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 Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: SB 882

INTRODUCER: Senator Dean

SUBJECT: Court Costs

DATE: January 20, 2012 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------------------|
| 1. | White | Cibula | JU | Favorable |
| 2. | Harkness | Sadberry | BJA | Pre-meeting |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

The bill repeals a statute that prohibits the Supreme Court from charging a losing party in the Supreme Court for copies of the record which have not been ordered by the party or his or her attorney.

This bill repeals section 57.101, Florida Statutes.

II. Present Situation:

Chapter 57, F.S., outlines the statutory requirements relating to the taxation of fees and costs accruing in legal actions before Florida courts. Generally, the clerk or the judge will tax the costs in favor of the prevailing party when the action is determined.¹ While it is a judicial function requiring adjudication to determine which party has the right to recover costs and in what amount, the clerical act of assessing costs may be performed by the court clerk.² The Florida Rules of Appellate Procedure list taxable costs as including:

- (1) fees for filing and service of process;
- (2) charges for preparation of the record;
- (3) bond premiums; and
- (4) other costs permitted by law.³

¹ Section 57.021, F.S.

² *Omohundro v. Wilkins*, 114 So. 502 (Fla. 1927); *Parker v. Dekle*, 35 So. 4 (Fla. 1903).

³ Fla. R. App. P. 9.400 (Costs and Attorneys' Fees).

Section 57.101, F.S., was first enacted in 1861.⁴ In its original context, the law prohibited the Clerk of the Supreme Court from charging a losing party for copies that the Clerk was required to provide to the Attorney General.⁵ That context has been lost in the subsequent shuffling of provisions of the Florida Statutes.

Today, the statute simply provides that a person may not be charged a fee for something the person did not order or request.⁶ Unless the copies have been ordered by the party or his or her attorney, costs of copies of the record of any paper on file in the Supreme Court shall not be taxed as costs against the losing party.⁷

III. Effect of Proposed Changes:

The bill repeals s. 57.101, F.S., which specifies that the “costs of copies of the record of any paper on file in the Supreme Court shall not be taxed as costs against the losing party unless the copies have been ordered by the party or his or her attorney.”

The bill provides an effective date of July 1, 2012.

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.

⁴ Chapter 1137, s. 5, Laws of Fla. (1861).

⁵ *Id.*

⁶ Section 57.101, F.S. (2011).

⁷ *Id.*

C. Government Sector Impact:

The Office of the State Courts Administrator does not expect any additional revenues or expenditures for the Judiciary as a result of this bill.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

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

⁸ Office of the State Courts Administrator, 2012 Judicial Impact Statement for SB 882 (Dec. 8, 2011) (on file with the Senate Committee on Judiciary).

By Senator Dean

3-00832-12

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A bill to be entitled

An act relating to court costs; repealing s. 57.101,
F.S., which prohibits the Supreme Court from taxing
the costs of copies of records against the losing
party under certain circumstances; providing an
effective date.

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

Section 1. Section 57.101, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2012.

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 Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: SJR 408

INTRODUCER: Senator Simmons

SUBJECT: Revising Age Limits for Judges and Justices

DATE: January 20, 2012

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------------------|
| 1. | O'Connor | Cibula | JU | Favorable |
| 2. | Harkness | Sadberry | BJA | Pre-meeting |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

Senate Joint Resolution 408 proposes an amendment to the Florida Constitution which increases the general mandatory retirement age of judges and justices from 70 to 75.

This joint resolution amends Article 5, section 8 of the Florida Constitution.

II. Present Situation:

Judicial Eligibility Requirements Generally

Most state constitutions prescribe eligibility requirements to serve as a judicial officer, including residence, age, and legal experience. Some states have no mandatory retirement age for judges, while other states' age limitation provisions range from 70 to 75 years of age.¹ In some states, the judicial eligibility requirements may vary depending on the court on which the judge serves, and a judge may be required to meet more stringent requirements if he or she is serving on an appellate court.²

¹ See Memorandum from John Sylvia of the West Virginia Legislative Auditor's Office, Performance Evaluation and Research Division to Honorable Edwin J. Bowman, Chairman (Jan. 5, 2005) (on file with the Senate Committee on Judiciary).

² G. Alan Tarr, *Designing an Appointive System: The Key Issues*, 34 FORDHAM URB. L.J. 291, 308 (Jan. 2007).

Florida Age Requirements for Judicial Office

Florida currently does not have a minimum age requirement for judicial office, but generally precludes a person from serving as a justice or judge of any court after attaining 70 years of age.³ A justice or judge may serve after 70 years of age on a temporary assignment or to complete a term, one-half of which has been served.⁴ Florida's previous constitution, the Constitution of 1885, did not provide a mandatory retirement age, but did require that justices and judges be at least 25 years old and attorneys at law.⁵ This provision was removed from the Constitution effective in 1973 as part of a revision of Article V⁶ and replaced with the current eligibility requirements, including the mandatory retirement age.

Constitutionality of Mandatory Retirement

A group of state court judges in Missouri challenged the Missouri Constitution's mandatory retirement provision, which required judges to retire at the age of 70.⁷ The judges alleged that the provision, which was very similar to Florida's analogous requirement, violated the Federal Age Discrimination in Employment Act (ADEA)⁸ and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.⁹ The Court held that the ADEA excluded judges from its definition of employees because of their status as policymakers.¹⁰ Additionally, the Court upheld Missouri's constitutional provision despite the judges' argument that it violated the Equal Protection Clause because it served the legitimate government purpose of enabling the people of Missouri to establish "a qualification for those who would be their judges."¹¹

Constitutional Amendment Process

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the Constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.¹² Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.¹³ If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first

³ FLA. CONST. art. V, s. 8.

⁴ *Id.*

⁵ FLA. CONST. art. V, s. 3 (1885).

⁶ SJR 52-D (1971), adopted in 1972 and effective Jan. 1, 1973.

⁷ MO. CONST. art. V, s. 26.

⁸ 29 U.S.C. ss. 621-34.

⁹ *Gregory v. Ashcroft*, 501 U.S. 452, 456 (1991).

¹⁰ *Id.* at 467.

¹¹ *Id.* at 473.

¹² FLA. CONST. art. XI, s. 1.

¹³ FLA. CONST. art. XI, s. 5(a).

Monday in January following the election, or on such other date as may be specified in the amendment.¹⁴

III. Effect of Proposed Changes:

Senate Joint Resolution 408 proposes an amendment to Article V, section 8 of the State Constitution to increase the age at which a justice or judge may no longer serve in a judicial office. Under the joint resolution, a justice or judge may no longer serve after attaining the age of 75 rather than 70. However, a judge who has attained the age of 75 years of age may continue to serve on a temporary assignment or to complete a judicial term.

This joint resolution will take effect on January 7, 2013, if approved by the electors at the 2012 General Election.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In order for the Legislature to submit SJR 408 to the voters for approval, the joint resolution must be agreed to by three-fifths of the membership of each house.¹⁵ If SJR 408 is agreed to by the Legislature, it will be submitted to the voters at the 2012 General Election. In order for SJR 408 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.¹⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹⁴ FLA. CONST. art. XI, s. 5(e).

¹⁵ FLA. CONST. art. XI, s. 1.

¹⁶ FLA. CONST. art. XI, s. 5(e).

C. Government Sector Impact:

According to the Office of the State Courts Administrator, this joint resolution has no fiscal or workload impact on the judiciary.¹⁷

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.¹⁸ Costs for advertising vary depending upon the length of the amendment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

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

¹⁷ Office of the State Courts Administrator, *2012 Judicial Impact Statement, SJR 408* (Oct. 26, 2011) (on file with the Senate Committee on Judiciary).

¹⁸ FLA. CONST. art. XI, s. 5(d).

By Senator Simmons

22-00380A-12

2012408__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 8 of Article V of the State Constitution to increase the age after which a justice or judge may no longer serve in a judicial office.

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

That the following amendment to Section 8 of Article V of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 8. Eligibility.—~~A No~~ person is not ~~shall be~~ eligible for the office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. ~~A No~~ justice or judge may not shall serve after attaining the age of seventy-five ~~seventy~~ years except upon temporary assignment or to complete a term, one-half of which has been served. ~~A No~~ person is not eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. ~~A No~~ person is not eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, ~~a no~~ person is not eligible for the office of

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

22-00380A-12

2012408__

county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a person is shall be eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or fewer ~~less~~ if the person is a member in good standing of the bar of Florida.

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTION 8

REVISING AGE LIMITS FOR JUDGES AND JUSTICES.—The State Constitution currently prohibits a justice or judge from serving in a judicial office after attaining the age of 70 years except upon temporary assignment or to complete a judicial term, if one-half of the term has been served. This proposed amendment increases the age after which a justice or judge may no longer serve to 75 years of age. However, a justice or judge who has attained the age of 75 years may continue to serve upon temporary assignment or to complete a judicial term.

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: CS/SB 488

INTRODUCER: Committee on Community Affairs and Senators Rich and Gaetz

SUBJECT: Animal Cruelty or Cruelty Ordinances

DATE: January 19, 2012 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------------------|
| 1. | Wiggins | Yeatman | CA | Fav/CS |
| 2. | Harkness | Sadberry | BJA | Pre-meeting |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 488 allows counties or municipalities to increase the surcharge up to \$15 up for each violation of an ordinance relating to animal control or cruelty. The local clerk of the court may retain one dollar of the surcharge. Up to five dollars of the surcharge must be used for the training of animal control officers. Any remaining funds are to be used to subsidize the costs to spay or neuter dogs and cats.

The CS/SB 488 substantially amends s. 828.27, of the Florida Statutes.

II. Present Situation:

Section 823.15(1), F.S., states that uncontrolled breeding of dogs and cats in the state results in the production of many more puppies and kittens than are needed to replace pet animals which have died or become lost or to provide pet animals for new owners. This leads to many dogs, cats, puppies, and kittens being unwanted, becoming strays and suffering privation and death, being impounded and destroyed at great expense to the community, and constituting a public nuisance and public health hazard. It is therefore declared to be the public policy of the state that

every feasible means of reducing the production of unneeded and unwanted puppies and kittens be encouraged.

Section 823.15, F.S., requires dogs and cats adopted or sold from animal shelters, including those run by local governments or humane societies, to be spayed or neutered before the animal is released. As an alternative, an animal may be released without spaying or neutering if the adopter/purchaser enters into a written agreement that the animal will be sterilized within a certain time frame. The shelter must charge a deposit, which it may keep if the adopter/purchaser do not provide proof of sterilization.

Counties and municipalities allow animal control officers to issue a written notice/citation to a person when the officer has probable cause to believe that the person has committed a civil infraction of an ordinance. The following are some animal control ordinance citations that might be issued by animal control officers:

- Obstructing enforcement - Refusing to surrender an animal upon lawful demand by the director of animal control or any animal control officer.
- Running at large - It shall be unlawful for any animal to run or remain at large on any public street, road, alley, park, or other public place.
- Public nuisance - Any nuisance complaint shall be investigated by animal control or law enforcement. The owner shall first be given written notification by the county that the animal's behavior constitutes a public nuisance, that the owner is required to make reasonable effort to abate the nuisance within seven calendar days of the written notice of violation, and that subsequent violations may result in the issuance of a citation to the owner for allowing his or her animal to become a nuisance.¹

Counties and municipalities, which elect to enact an animal control or cruelty ordinance, may include a surcharge of up to \$5 for each civil penalty imposed in addition to any penalties, fees, or court costs. The surcharge is distributed based on the county or municipalities' agreed upon fee schedule and is used to pay for the cost of training animal control officers.²

III. Effect of Proposed Changes:

Section 1 amends s. 828.27, F.S., to allow counties or municipalities to collect a surcharge in addition to the penalties imposed by the county or court for the civil violation relating to an animal control or cruelty ordinance from up to \$5 to up to \$15. The CS/SB 488 specifies that one dollar of the surcharge may be retained by the clerk of the court and up to five dollars of the surcharge must be used for the training of animal control officers. Any remaining funds are to be used to subsidize the costs to spay or neuter dogs and cats in the possession of the animal control authority, whose owners have given permission to sterilize. The animal's owner may not be charged more than the cost of sterilization minus the subsidy provided by the surcharge. If the surcharge funds collected to pay the costs of training animal control officers exceed the amount needed to conduct training for the animal control officers, the animal control authority may apply any excess surcharge funds to spay and neuter dogs and cats.

¹ Leon County, Florida Code of Ordinances, Code of Laws, Chapter 4 Animals, Article II. Animal Control, Division 1., <http://www.leoncountyfl.gov/animal/ordinance.asp>.

² Section 828.27, F.S.

Section 2 sets an effective date of July 1, 2012.

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:

Counties and municipalities that elect to enact an animal control or cruelty ordinance may include a surcharge of up to \$15 for each civil penalty imposed in addition to any penalties, fees, or court costs. The clerk of the court may retain one dollar of the surcharge and up to the five dollars are to be used to pay the cost of training for animal control officers. The remaining funds from the surcharge are to be used to spay and neuter animals.

B. Private Sector Impact:

If a county or municipality elects to enact an animal control or cruelty ordinance and collects an increased surcharge that designates funds to sterilize cats and dogs, more animals will be sterilized which will decrease the animal population in that locality.

C. Government Sector Impact:

The clerk of the court retains \$1 of the surcharge, which would generate a small but indeterminate amount of trust fund revenue.

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 Community Affairs Committee on January 12, 2012:

The CS/SB 488 permits instead of requires counties or municipalities that enact an ordinance relating to animal control or cruelty to impose and collect a surcharge of up to \$15 upon each civil penalty. The CS specifies that the clerk of the court may retain one dollar of the surcharge and up to the next five dollars must be used to pay the cost of training for animal control officers. The remaining funds from the surcharge are to be used to spay and neuter animals.

- B. **Amendments:**

None.

By the Committee on Community Affairs; and Senators Rich, Gaetz,
and Sobel

578-01886-12

2012488c1

A bill to be entitled

An act relating to animal control or cruelty ordinances; amending s. 828.27, F.S.; authorizing a county or municipality enacting an ordinance relating to animal control or cruelty to impose a specified surcharge on the civil penalty for violations of the ordinance; specifying use of the proceeds of the surcharge; prohibiting the governing body of a county or municipality from charging owners of animals more than a certain amount for the spaying or neutering of their animals in specified circumstances; authorizing the animal control authority to allocate certain excess funds to the program to spay and neuter cats and dogs; providing for construction; providing an effective date.

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

Section 1. Paragraph (b) of subsection (4) of section 828.27, Florida Statutes, is amended, and paragraphs (c) and (d) are added to that subsection, to read:

828.27 Local animal control or cruelty ordinances; penalty.—

(4)

(b) The governing body of a county or municipality enacting an ordinance relating to animal control or cruelty may impose and collect a surcharge of up to \$15 ~~\$5~~ upon each civil penalty imposed for each violation of the an ordinance ~~relating to animal control or cruelty~~. One dollar of the surcharge may be

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578-01886-12

2012488c1

retained by the clerk of the court, up to the next \$5 of the surcharge ~~proceeds from such surcharges~~ shall be used to pay the costs of training for animal control officers, and the remainder of the surcharge shall be used to subsidize the costs to spay or neuter dogs and cats in the possession of the animal control authority or whose owners voluntarily submit their animals for sterilization. An owner of an animal may not be charged more for the spaying or neutering than the cost of sterilization less the subsidy paid from the surcharge.

(c) If the surcharge funds collected to pay the costs of training animal control officers exceed the amount needed to conduct training for the animal control officers in a given locality, the animal control authority may apply the excess surcharge funds to the program to spay and neuter cats and dogs.

(d) This subsection does not require the governing body of a county or municipality to enact an animal control or cruelty ordinance.

Section 2. This act shall take effect July 1, 2012.

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: CS/SB 872

INTRODUCER: Criminal Justice Committee and Senator Fasano

SUBJECT: Murder

DATE: January 26, 2012 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|-----------------|------------|--------------------|
| 1. | <u>Cellon</u> | <u>Cannon</u> | <u>CJ</u> | Fav/CS |
| 2. | <u>Sneed</u> | <u>Sadberry</u> | <u>BJA</u> | Pre-meeting |
| 3. | _____ | _____ | <u>BC</u> | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill expands what constitutes first, second, and third degree murder to include the unlawful killing of a human being when the defendant commits aggravated fleeing or eluding and that act causes serious bodily injury or death to another. It also makes certain conforming changes to the Offense Severity Ranking Chart.

This bill substantially amends sections 782.04 and 921.0022 of the Florida Statutes. It also reenacts the following statutes to incorporate changes made to section 782.04, Florida Statutes: section 775.0823 (violent offenses committed against law enforcement and correctional officers, state attorneys, assistant state attorneys, justices, or judges); section 782.051, (attempted felony murder); section 782.065, (murder; law enforcement officer); and section 947.146, (Control Release Authority), Florida Statutes.

II. Present Situation:

Section 316.1935(4), F.S., sets forth the crimes of aggravated fleeing or eluding and aggravated fleeing or eluding with serious bodily injury or death.

Aggravated fleeing or eluding is a second degree felony and occurs when the act causes injury to another person or causes damage to any property belonging to another person.

Aggravated fleeing or eluding with serious bodily injury or death is a first degree felony and occurs when the act causes serious bodily injury or death to another person.

Section 782.04(1)(a)2., F.S., defines first degree murder as the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, a variety of specified offenses (e.g., arson, sexual battery, robbery, burglary, etc.). First degree murder is a capital felony.

Section 782.04(3), F.S., provides that when a person is killed in the perpetration of, or in the attempt to perpetrate, any of a variety of specified offenses (e.g., arson, sexual battery, robbery, burglary, etc.), by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such offense, the person perpetrating or attempting to perpetrate such felony is guilty of second degree murder. Second degree murder is a first degree felony punishable by life imprisonment or by up to 30 years imprisonment.

Section 782.04(4), F.S., defines third degree murder as the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than a variety of specifically listed offenses (e.g., arson, sexual battery, robbery, burglary, etc.). Third degree murder is a second degree felony punishable by up to 15 years imprisonment.

First Degree Murder

Section 782.04(1)(a)2., F.S., defines first degree murder as the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,
- Unlawful throwing, placing, or discharging of a destructive device or bomb,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

First degree murder is a capital offense, punishable by death or life in prison.

Second Degree Murder

Section 782.04(3), F.S., provides that when a person is killed in the perpetration of, or in the attempt to perpetrate, any of the following offenses by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony is guilty of second degree murder:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,
- Unlawful throwing, placing, or discharging of a destructive device or bomb,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

Second degree murder is a first degree felony punishable by imprisonment for a term of years not exceeding life or by up to 30 years imprisonment and a \$10,000 fine.

Third Degree Murder

Section 782.04(4), F.S., defines third degree murder as the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,
- Unlawful throwing, placing, or discharging of a destructive device or bomb,

- Unlawful distribution of any substance controlled under s. 893.03(1), F.S., cocaine as described in s. 893.03(2)(a)4., F.S., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

Third degree murder is a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine.

Aggravated Fleeing and Eluding

Section 316.1935, F.S., proscribes the act of fleeing or eluding a law enforcement officer.

Subsection (4) of the statute, provided below, establishes the crimes of aggravated fleeing or eluding and aggravated fleeing or eluding with serious bodily injury or death.

(4) Any person who, in the course of unlawfully leaving or attempting to leave the scene of a crash in violation of s. 316.027, F.S. (crash involving death or personal injury), or s. 316.061, F.S. (crashes involving damage to vehicle or personal property), having knowledge of an order to stop by a duly authorized law enforcement officer, willfully refuses or fails to stop in compliance with such an order, or having stopped in knowing compliance with such order, willfully flees in an attempt to elude such officer and, as a result of such fleeing or eluding:

- (a) Causes injury to another person or causes damage to any property belonging to another person, commits aggravated fleeing or eluding, a second degree felony.¹
- (b) Causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle, commits aggravated fleeing or eluding with serious bodily injury or death, a first degree felony.²

The court is required to sentence any person convicted of committing aggravated fleeing or eluding with serious bodily injury or death to a mandatory minimum sentence of 3 years imprisonment.

¹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

² A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

III. Effect of Proposed Changes:

The bill adds aggravated fleeing or eluding when that act causes serious bodily injury or death to another to the above-described lists of murder offenses contained in s. 782.04(1)(a)2., (3), and (4), F.S.

The bill also makes conforming changes to s. 921.0022, F.S., the Criminal Punishment Code, offense severity ranking chart.

The effective date of the bill is October 1, 2012.

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:**C. Government Sector Impact:**

On December 14, 2011, the Criminal Justice Impact Conference met and determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on January 25, 2012:

The bill as amended limits the expansion of what constitutes first, second, and third degree murder to aggravated fleeing or eluding when a person is unlawfully leaving or attempting to leave the scene of a crash and that act causes serious bodily injury or death. Before the amendment, the bill included all acts of aggravated fleeing or eluding.

- B. **Amendments:**

None.

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

By the Committee on Criminal Justice; and Senator Fasano

591-02364-12

2012872c1

A bill to be entitled

An act relating to murder; amending s. 782.04, F.S.; providing that the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, the offense of aggravated fleeing or eluding with serious bodily injury or death, is murder of a specified degree, dependent upon certain circumstances; amending s. 921.0022, F.S.; revising provisions of the offense severity ranking chart of the Criminal Punishment Code to conform to changes made by the act; reenacting ss. 775.0823, 782.051, 782.065, and 947.146(3), F.S., relating to violent offenses committed against law enforcement officers and others, attempted felony murder, murder of a law enforcement officer, and the Control Release Authority, respectively, to incorporate the amendments made to s. 782.04, F.S., in references thereto; providing an effective date.

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

Section 1. This act may be cited as the "Deputy John C. Mecklenburg Act."

Section 2. Section 782.04, Florida Statutes, is amended to read:

782.04 Murder.—

(1) (a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;

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2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:

- a. Trafficking offense prohibited by s. 893.135(1),
- b. Arson,
- c. Sexual battery,
- d. Robbery,
- e. Burglary,
- f. Kidnapping,
- g. Escape,
- h. Aggravated child abuse,
- i. Aggravated abuse of an elderly person or disabled adult,
- j. Aircraft piracy,
- k. Unlawful throwing, placing, or discharging of a destructive device or bomb,
- l. Carjacking,
- m. Home-invasion robbery,
- n. Aggravated stalking,
- o. Murder of another human being,
- p. Resisting an officer with violence to his or her person,
- g. Aggravated fleeing or eluding with serious bodily injury or death,

~~r.~~ Felony that is an act of terrorism or is in furtherance of an act of terrorism; or

3. Which resulted from the unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or methadone by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,

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59
60 is murder in the first degree and constitutes a capital felony,
61 punishable as provided in s. 775.082.

62 (b) In all cases under this section, the procedure set
63 forth in s. 921.141 shall be followed in order to determine
64 sentence of death or life imprisonment.

65 (2) The unlawful killing of a human being, when perpetrated
66 by any act imminently dangerous to another and evincing a
67 depraved mind regardless of human life, although without any
68 premeditated design to effect the death of any particular
69 individual, is murder in the second degree and constitutes a
70 felony of the first degree, punishable by imprisonment for a
71 term of years not exceeding life or as provided in s. 775.082,
72 s. 775.083, or s. 775.084.

73 (3) When a human being ~~person~~ is killed during ~~in~~ the
74 perpetration of, or during ~~in~~ the attempt to perpetrate, any:

- 75 (a) Trafficking offense prohibited by s. 893.135(1),
76 (b) Arson,
77 (c) Sexual battery,
78 (d) Robbery,
79 (e) Burglary,
80 (f) Kidnapping,
81 (g) Escape,
82 (h) Aggravated child abuse,
83 (i) Aggravated abuse of an elderly person or disabled
84 adult,
85 (j) Aircraft piracy,
86 (k) Unlawful throwing, placing, or discharging of a
87 destructive device or bomb,

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88 (l) Carjacking,

89 (m) Home-invasion robbery,

90 (n) Aggravated stalking,

91 (o) Murder of another human being,

92 (p) Aggravated fleeing or eluding with serious bodily
93 injury or death,

94 (q) ~~(p)~~ Resisting an officer with violence to his or her
95 person, or

96 (r) ~~(q)~~ Felony that is an act of terrorism or is in
97 furtherance of an act of terrorism,

98
99 by a person other than the person engaged in the perpetration of
100 or in the attempt to perpetrate such felony, the person
101 perpetrating or attempting to perpetrate such felony is guilty
102 of murder in the second degree, which constitutes a felony of
103 the first degree, punishable by imprisonment for a term of years
104 not exceeding life or as provided in s. 775.082, s. 775.083, or
105 s. 775.084.

106 (4) The unlawful killing of a human being, when perpetrated
107 without any design to effect death, by a person engaged in the
108 perpetration of, or in the attempt to perpetrate, any felony
109 other than any:

- 110 (a) Trafficking offense prohibited by s. 893.135(1),
111 (b) Arson,
112 (c) Sexual battery,
113 (d) Robbery,
114 (e) Burglary,
115 (f) Kidnapping,
116 (g) Escape,

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117 (h) Aggravated child abuse,
 118 (i) Aggravated abuse of an elderly person or disabled
 119 adult,
 120 (j) Aircraft piracy,
 121 (k) Unlawful throwing, placing, or discharging of a
 122 destructive device or bomb,
 123 (l) Unlawful distribution of any substance controlled under
 124 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or
 125 opium or any synthetic or natural salt, compound, derivative, or
 126 preparation of opium by a person 18 years of age or older, when
 127 such drug is proven to be the proximate cause of the death of
 128 the user,
 129 (m) Carjacking,
 130 (n) Home-invasion robbery,
 131 (o) Aggravated stalking,
 132 (p) Murder of another human being,
 133 (q) Aggravated fleeing or eluding with serious bodily
 134 injury or death,
 135 (r)(q) Resisting an officer with violence to his or her
 136 person, or
 137 (s)(r) Felony that is an act of terrorism or is in
 138 furtherance of an act of terrorism,
 139
 140 is murder in the third degree and constitutes a felony of the
 141 second degree, punishable as provided in s. 775.082, s. 775.083,
 142 or s. 775.084.
 143 (5) As used in this section, the term "terrorism" means an
 144 activity that:
 145 (a)1. Involves a violent act or an act dangerous to human

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146 life which is a violation of the criminal laws of this state or
 147 of the United States; or
 148 2. Involves a violation of s. 815.06; and
 149 (b) Is intended to:
 150 1. Intimidate, injure, or coerce a civilian population;
 151 2. Influence the policy of a government by intimidation or
 152 coercion; or
 153 3. Affect the conduct of government through destruction of
 154 property, assassination, murder, kidnapping, or aircraft piracy.
 155 Section 3. Paragraphs (h) and (i) of subsection (3) of
 156 section 921.0022, Florida Statutes, are amended to read:
 157 921.0022 Criminal Punishment Code; offense severity ranking
 158 chart.-
 159 (3) OFFENSE SEVERITY RANKING CHART
 160 (h) LEVEL 8
 161

| Florida Statute | Felony Degree | Description |
|-----------------------|---------------|--|
| 316.193 (3)(c)3.a. | 2nd | DUI manslaughter. |
| 316.1935(4)(b) | 1st | Aggravated fleeing or attempted eluding with serious bodily injury or death. |
| 327.35(3)(c)3. | 2nd | Vessel BUI manslaughter. |
| 499.0051(7) | 1st | Knowing trafficking in contraband prescription drugs. |

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166 499.0051(8) 1st Knowing forgery of prescription labels
or prescription drug labels.

167 560.123(8)(b)2. 2nd Failure to report currency or payment
instruments totaling or exceeding
\$20,000, but less than \$100,000 by
money transmitter.

168 560.125(5)(b) 2nd Money transmitter business by
unauthorized person, currency or
payment instruments totaling or
exceeding \$20,000, but less than
\$100,000.

169 655.50(10)(b)2. 2nd Failure to report financial
transactions totaling or exceeding
\$20,000, but less than \$100,000 by
financial institutions.

170 777.03(2)(a) 1st Accessory after the fact, capital
felony.

171 782.04(4) 2nd Killing of human without design when
engaged in act or attempt of any felony
other than arson, sexual battery,
robbery, burglary, kidnapping,
aggravated fleeing or eluding with
serious bodily injury or death,

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172 aircraft piracy, or unlawfully
discharging bomb.

782.051(2) 1st Attempted felony murder while
perpetrating or attempting to
perpetrate a felony not enumerated in
s. 782.04(3).

173 782.071(1)(b) 1st Committing vehicular homicide and
failing to render aid or give
information.

174 782.072(2) 1st Committing vessel homicide and failing
to render aid or give information.

175 790.161(3) 1st Discharging a destructive device which
results in bodily harm or property
damage.

176 794.011(5) 2nd Sexual battery, victim 12 years or
over, offender does not use physical
force likely to cause serious injury.

177 794.08(3) 2nd Female genital mutilation, removal of a
victim younger than 18 years of age
from this state.

178 800.04(4) 2nd Lewd or lascivious battery.

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180 806.01(1) 1st Maliciously damage dwelling or
structure by fire or explosive,
believing person in structure.

181 810.02(2)(a) 1st,PBL Burglary with assault or battery.

182 810.02(2)(b) 1st,PBL Burglary; armed with explosives or
dangerous weapon.

183 810.02(2)(c) 1st Burglary of a dwelling or structure
causing structural damage or \$1,000 or
more property damage.

184 812.014(2)(a)2. 1st Property stolen; cargo valued at
\$50,000 or more, grand theft in 1st
degree.

185 812.13(2)(b) 1st Robbery with a weapon.

186 812.135(2)(c) 1st Home-invasion robbery, no firearm,
deadly weapon, or other weapon.

187 817.568(6) 2nd Fraudulent use of personal
identification information of an
individual under the age of 18.

188 825.102(2) 1st Aggravated abuse of an elderly person
or disabled adult.

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189 825.1025(2) 2nd Lewd or lascivious battery upon an
elderly person or disabled adult.

190 825.103(2)(a) 1st Exploiting an elderly person or
disabled adult and property is valued
at \$100,000 or more.

191 837.02(2) 2nd Perjury in official proceedings
relating to prosecution of a capital
felony.

192 837.021(2) 2nd Making contradictory statements in
official proceedings relating to
prosecution of a capital felony.

193 860.121(2)(c) 1st Shooting at or throwing any object in
path of railroad vehicle resulting in
great bodily harm.

194 860.16 1st Aircraft piracy.

195 893.13(1)(b) 1st Sell or deliver in excess of 10 grams
of any substance specified in s.
893.03(1)(a) or (b).

196 893.13(2)(b) 1st Purchase in excess of 10 grams of any
substance specified in s. 893.03(1)(a)
or (b).

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197 893.13(6)(c) 1st Possess in excess of 10 grams of any
substance specified in s. 893.03(1)(a)
or (b).

198 893.135(1)(a)2. 1st Trafficking in cannabis, more than
2,000 lbs., less than 10,000 lbs.

199 893.135 1st Trafficking in cocaine, more than 200
(1)(b)1.b. grams, less than 400 grams.

200 893.135 1st Trafficking in illegal drugs, more than
(1)(c)1.b. 14 grams, less than 28 grams.

201 893.135 1st Trafficking in phencyclidine, more than
(1)(d)1.b. 200 grams, less than 400 grams.

202 893.135 1st Trafficking in methaqualone, more than
(1)(e)1.b. 5 kilograms, less than 25 kilograms.

203 893.135 1st Trafficking in amphetamine, more than
(1)(f)1.b. 28 grams, less than 200 grams.

204 893.135 1st Trafficking in flunitrazepam, 14 grams
(1)(g)1.b. or more, less than 28 grams.

205 893.135 1st Trafficking in gamma-hydroxybutyric
(1)(h)1.b. acid (GHB), 5 kilograms or more, less
than 10 kilograms.

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206 893.135 1st Trafficking in 1,4-Butanediol, 5
(1)(j)1.b. kilograms or more, less than 10
kilograms.

207 893.135 1st Trafficking in Phenethylamines, 200
(1)(k)2.b. grams or more, less than 400 grams.

208 893.1351(3) 1st Possession of a place used to
manufacture controlled substance when
minor is present or resides there.

209 895.03(1) 1st Use or invest proceeds derived from
pattern of racketeering activity.

210 895.03(2) 1st Acquire or maintain through
racketeering activity any interest in
or control of any enterprise or real
property.

211 895.03(3) 1st Conduct or participate in any
enterprise through pattern of
racketeering activity.

212 896.101(5)(b) 2nd Money laundering, financial
transactions totaling or exceeding
\$20,000, but less than \$100,000.

896.104(4)(a)2. 2nd Structuring transactions to evade
reporting or registration requirements,

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financial transactions totaling or
 exceeding \$20,000 but less than
 \$100,000.

213
 214 (i) LEVEL 9
 215

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

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exceeding \$100,000.

222 655.50 (10) (b) 3. 1st Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.

223 775.0844 1st Aggravated white collar crime.

224 782.04 (1) 1st Attempt, conspire, or solicit to commit premeditated murder.

225 782.04 (3) 1st,PBL Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.

226 782.051 (1) 1st Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04 (3).

227 782.07 (2) 1st Aggravated manslaughter of an elderly person or disabled adult.

228 787.01 (1) (a) 1. 1st,PBL Kidnapping; hold for ransom or reward or as a shield or hostage.

229 787.01 (1) (a) 2. 1st,PBL Kidnapping with intent to commit or

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 facilitate commission of any felony.

230 787.01(1)(a)4. 1st,PBL Kidnapping with intent to interfere
 with performance of any governmental
 or political function.

231 787.02(3)(a) 1st False imprisonment; child under age
 13; perpetrator also commits
 aggravated child abuse, sexual
 battery, or lewd or lascivious
 battery, molestation, conduct, or
 exhibition.

232 790.161 1st Attempted capital destructive device
 offense.

233 790.166(2) 1st,PBL Possessing, selling, using, or
 attempting to use a weapon of mass
 destruction.

234 794.011(2) 1st Attempted sexual battery; victim less
 than 12 years of age.

235 794.011(2) Life Sexual battery; offender younger than
 18 years and commits sexual battery on
 a person less than 12 years.

236 794.011(4) 1st Sexual battery; victim 12 years or
 older, certain circumstances.

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237 794.011(8)(b) 1st Sexual battery; engage in sexual
 conduct with minor 12 to 18 years by
 person in familial or custodial
 authority.

238 794.08(2) 1st Female genital mutilation; victim
 younger than 18 years of age.

239 800.04(5)(b) Life Lewd or lascivious molestation; victim
 less than 12 years; offender 18 years
 or older.

240 812.13(2)(a) 1st,PBL Robbery with firearm or other deadly
 weapon.

241 812.133(2)(a) 1st,PBL Carjacking; firearm or other deadly
 weapon.

242 812.135(2)(b) 1st Home-invasion robbery with weapon.

243 817.568(7) 2nd, Fraudulent use of personal
 PBL identification information of an
 individual under the age of 18 by his
 or her parent, legal guardian, or
 person exercising custodial authority.

244 827.03(2) 1st Aggravated child abuse.

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 847.0145(1) 1st Selling, or otherwise transferring
 custody or control, of a minor.
 246
 847.0145(2) 1st Purchasing, or otherwise obtaining
 custody or control, of a minor.
 247
 859.01 1st Poisoning or introducing bacteria,
 radioactive materials, viruses, or
 chemical compounds into food, drink,
 medicine, or water with intent to kill
 or injure another person.
 248
 893.135 1st Attempted capital trafficking offense.
 249
 893.135(1)(a)3. 1st Trafficking in cannabis, more than
 10,000 lbs.
 250
 893.135 1st Trafficking in cocaine, more than 400
 (1)(b)1.c. grams, less than 150 kilograms.
 251
 893.135 1st Trafficking in illegal drugs, more
 (1)(c)1.c. than 28 grams, less than 30 kilograms.
 252
 893.135 1st Trafficking in phencyclidine, more
 (1)(d)1.c. than 400 grams.
 253
 893.135 1st Trafficking in methaqualone, more than
 (1)(e)1.c. 25 kilograms.
 254

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 893.135 1st Trafficking in amphetamine, more than
 (1)(f)1.c. 200 grams.
 255
 893.135 1st Trafficking in gamma-hydroxybutyric
 (1)(h)1.c. acid (GHB), 10 kilograms or more.
 256
 893.135 1st Trafficking in 1,4-Butanediol, 10
 (1)(j)1.c. kilograms or more.
 257
 893.135 1st Trafficking in Phenethylamines, 400
 (1)(k)2.c. grams or more.
 258
 896.101(5)(c) 1st Money laundering, financial
 instruments totaling or exceeding
 \$100,000.
 259
 896.104(4)(a)3. 1st Structuring transactions to evade
 reporting or registration
 requirements, financial transactions
 totaling or exceeding \$100,000.
 260
 261 Section 4. For the purpose of incorporating the amendment
 262 made by this act to section 782.04, Florida Statutes, in a
 263 reference thereto, section 775.0823, Florida Statutes, is
 264 reenacted to read:
 265 775.0823 Violent offenses committed against law enforcement
 266 officers, correctional officers, state attorneys, assistant
 267 state attorneys, justices, or judges.—The Legislature does
 268 hereby provide for an increase and certainty of penalty for any

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269 person convicted of a violent offense against any law
 270 enforcement or correctional officer, as defined in s. 943.10(1),
 271 (2), (3), (6), (7), (8), or (9); against any state attorney
 272 elected pursuant to s. 27.01 or assistant state attorney
 273 appointed under s. 27.181; or against any justice or judge of a
 274 court described in Art. V of the State Constitution, which
 275 offense arises out of or in the scope of the officer's duty as a
 276 law enforcement or correctional officer, the state attorney's or
 277 assistant state attorney's duty as a prosecutor or investigator,
 278 or the justice's or judge's duty as a judicial officer, as
 279 follows:

- 280 (1) For murder in the first degree as described in s.
 281 782.04(1), if the death sentence is not imposed, a sentence of
 282 imprisonment for life without eligibility for release.
 283 (2) For attempted murder in the first degree as described
 284 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,
 285 or s. 775.084.
 286 (3) For attempted felony murder as described in s. 782.051,
 287 a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.
 288 (4) For murder in the second degree as described in s.
 289 782.04(2) and (3), a sentence pursuant to s. 775.082, s.
 290 775.083, or s. 775.084.
 291 (5) For attempted murder in the second degree as described
 292 in s. 782.04(2) and (3), a sentence pursuant to s. 775.082, s.
 293 775.083, or s. 775.084.
 294 (6) For murder in the third degree as described in s.
 295 782.04(4), a sentence pursuant to s. 775.082, s. 775.083, or s.
 296 775.084.
 297 (7) For attempted murder in the third degree as described

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298 in s. 782.04(4), a sentence pursuant to s. 775.082, s. 775.083,
 299 or s. 775.084.

300 (8) For manslaughter as described in s. 782.07 during the
 301 commission of a crime, a sentence pursuant to s. 775.082, s.
 302 775.083, or s. 775.084.

303 (9) For kidnapping as described in s. 787.01, a sentence
 304 pursuant to s. 775.082, s. 775.083, or s. 775.084.

305 (10) For aggravated battery as described in s. 784.045, a
 306 sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

307 (11) For aggravated assault as described in s. 784.021, a
 308 sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

309
 310 Notwithstanding the provisions of s. 948.01, with respect to any
 311 person who is found to have violated this section, adjudication
 312 of guilt or imposition of sentence shall not be suspended,
 313 deferred, or withheld.

314 Section 5. For the purpose of incorporating the amendment
 315 made by this act to section 782.04, Florida Statutes, in a
 316 reference thereto, section 782.051, Florida Statutes, is
 317 reenacted to read:

318 782.051 Attempted felony murder.—

319 (1) Any person who perpetrates or attempts to perpetrate
 320 any felony enumerated in s. 782.04(3) and who commits, aids, or
 321 abets an intentional act that is not an essential element of the
 322 felony and that could, but does not, cause the death of another
 323 commits a felony of the first degree, punishable by imprisonment
 324 for a term of years not exceeding life, or as provided in s.
 325 775.082, s. 775.083, or s. 775.084, which is an offense ranked
 326 in level 9 of the Criminal Punishment Code. Victim injury points

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327 shall be scored under this subsection.

328 (2) Any person who perpetrates or attempts to perpetrate
329 any felony other than a felony enumerated in s. 782.04(3) and
330 who commits, aids, or abets an intentional act that is not an
331 essential element of the felony and that could, but does not,
332 cause the death of another commits a felony of the first degree,
333 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
334 which is an offense ranked in level 8 of the Criminal Punishment
335 Code. Victim injury points shall be scored under this
336 subsection.

337 (3) When a person is injured during the perpetration of or
338 the attempt to perpetrate any felony enumerated in s. 782.04(3)
339 by a person other than the person engaged in the perpetration of
340 or the attempt to perpetrate such felony, the person
341 perpetrating or attempting to perpetrate such felony commits a
342 felony of the second degree, punishable as provided in s.
343 775.082, s. 775.083, or s. 775.084, which is an offense ranked
344 in level 7 of the Criminal Punishment Code. Victim injury points
345 shall be scored under this subsection.

346 Section 6. For the purpose of incorporating the amendment
347 made by this act to section 782.04, Florida Statutes, in a
348 reference thereto, section 782.065, Florida Statutes, is
349 reenacted to read:

350 782.065 Murder; law enforcement officer.—Notwithstanding
351 ss. 775.082, 775.0823, 782.04, 782.051, and chapter 921, a
352 defendant shall be sentenced to life imprisonment without
353 eligibility for release upon findings by the trier of fact that,
354 beyond a reasonable doubt:

355 (1) The defendant committed murder in the first degree in

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356 violation of s. 782.04(1) and a death sentence was not imposed;
357 murder in the second or third degree in violation of s.
358 782.04(2), (3), or (4); attempted murder in the first or second
359 degree in violation of s. 782.04(1)(a)1. or (2); or attempted
360 felony murder in violation of s. 782.051; and

361 (2) The victim of any offense described in subsection (1)
362 was a law enforcement officer, part-time law enforcement
363 officer, or auxiliary law enforcement officer, as those terms
364 are defined in s. 943.10, engaged in the lawful performance of a
365 legal duty.

366 Section 7. For the purpose of incorporating the amendment
367 made by this act to section 782.04, Florida Statutes, in a
368 reference thereto, subsection (3) of section 947.146, Florida
369 Statutes, is reenacted to read:

370 947.146 Control Release Authority.—

371 (3) Within 120 days prior to the date the state
372 correctional system is projected pursuant to s. 216.136 to
373 exceed 99 percent of total capacity, the authority shall
374 determine eligibility for and establish a control release date
375 for an appropriate number of parole ineligible inmates committed
376 to the department and incarcerated within the state who have
377 been determined by the authority to be eligible for
378 discretionary early release pursuant to this section. In
379 establishing control release dates, it is the intent of the
380 Legislature that the authority prioritize consideration of
381 eligible inmates closest to their tentative release date. The
382 authority shall rely upon commitment data on the offender
383 information system maintained by the department to initially
384 identify inmates who are to be reviewed for control release

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385 consideration. The authority may use a method of objective risk
 386 assessment in determining if an eligible inmate should be
 387 released. Such assessment shall be a part of the department's
 388 management information system. However, the authority shall have
 389 sole responsibility for determining control release eligibility,
 390 establishing a control release date, and effectuating the
 391 release of a sufficient number of inmates to maintain the inmate
 392 population between 99 percent and 100 percent of total capacity.
 393 Inmates who are ineligible for control release are inmates who
 394 are parole eligible or inmates who:

395 (a) Are serving a sentence that includes a mandatory
 396 minimum provision for a capital offense or drug trafficking
 397 offense and have not served the number of days equal to the
 398 mandatory minimum term less any jail-time credit awarded by the
 399 court;

400 (b) Are serving the mandatory minimum portion of a sentence
 401 enhanced under s. 775.087(2) or (3), or s. 784.07(3);

402 (c) Are convicted, or have been previously convicted, of
 403 committing or attempting to commit sexual battery, incest, or
 404 any of the following lewd or indecent assaults or acts:
 405 masturbating in public; exposing the sexual organs in a
 406 perverted manner; or nonconsensual handling or fondling of the
 407 sexual organs of another person;

408 (d) Are convicted, or have been previously convicted, of
 409 committing or attempting to commit assault, aggravated assault,
 410 battery, or aggravated battery, and a sex act was attempted or
 411 completed during commission of such offense;

412 (e) Are convicted, or have been previously convicted, of
 413 committing or attempting to commit kidnapping, burglary, or

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414 murder, and the offense was committed with the intent to commit
 415 sexual battery or a sex act was attempted or completed during
 416 commission of the offense;

417 (f) Are convicted, or have been previously convicted, of
 418 committing or attempting to commit false imprisonment upon a
 419 child under the age of 13 and, in the course of committing the
 420 offense, the inmate committed aggravated child abuse, sexual
 421 battery against the child, or a lewd or lascivious offense
 422 committed upon or in the presence of a person less than 16 years
 423 of age;

424 (g) Are sentenced, have previously been sentenced, or have
 425 been sentenced at any time under s. 775.084, or have been
 426 sentenced at any time in another jurisdiction as a habitual
 427 offender;

428 (h) Are convicted, or have been previously convicted, of
 429 committing or attempting to commit assault, aggravated assault,
 430 battery, aggravated battery, kidnapping, manslaughter, or murder
 431 against an officer as defined in s. 943.10(1), (2), (3), (6),
 432 (7), (8), or (9); against a state attorney or assistant state
 433 attorney; or against a justice or judge of a court described in
 434 Art. V of the State Constitution; or against an officer, judge,
 435 or state attorney employed in a comparable position by any other
 436 jurisdiction; or

437 (i) Are convicted, or have been previously convicted, of
 438 committing or attempting to commit murder in the first, second,
 439 or third degree under s. 782.04(1), (2), (3), or (4), or have
 440 ever been convicted of any degree of murder or attempted murder
 441 in another jurisdiction;

442 (j) Are convicted, or have been previously convicted, of

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443 DUI manslaughter under s. 316.193(3)(c)3., and are sentenced, or
444 have been sentenced at any time, as a habitual offender for such
445 offense, or have been sentenced at any time in another
446 jurisdiction as a habitual offender for such offense;

447 (k)1. Are serving a sentence for an offense committed on or
448 after January 1, 1994, for a violation of the Law Enforcement
449 Protection Act under s. 775.0823(2), (3), (4), (5), or (6), and
450 the subtotal of the offender's sentence points is multiplied
451 pursuant to former s. 921.0014 or s. 921.0024;

452 2. Are serving a sentence for an offense committed on or
453 after October 1, 1995, for a violation of the Law Enforcement
454 Protection Act under s. 775.0823(2), (3), (4), (5), (6), (7),
455 (8), or (9), and the subtotal of the offender's sentence points
456 is multiplied pursuant to former s. 921.0014 or s. 921.0024;

457 (l) Are serving a sentence for an offense committed on or
458 after January 1, 1994, for possession of a firearm,
459 semiautomatic firearm, or machine gun in which additional points
460 are added to the subtotal of the offender's sentence points
461 pursuant to former s. 921.0014 or s. 921.0024; or

462 (m) Are convicted, or have been previously convicted, of
463 committing or attempting to commit manslaughter, kidnapping,
464 robbery, carjacking, home-invasion robbery, or a burglary under
465 s. 810.02(2).

466
467 In making control release eligibility determinations under this
468 subsection, the authority may rely on any document leading to or
469 generated during the course of the criminal proceedings,
470 including, but not limited to, any presentence or postsentence
471 investigation or any information contained in arrest reports

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472 relating to circumstances of the offense.

473 Section 8. This act shall take effect October 1, 2012.

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**NO MEETING
MATERIALS AVAILABLE.**

THE FLORIDA SENATE
APPEARANCE RECORD

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

Jan 31 2012
Meeting Date

Topic Judicial Retirement Bill Number SJR 408
(if applicable)
Name Alan Lawson Amendment Barcode _____
(if applicable)
Job Title District Court Judge
Address 300 S Beach St Phone 306 947 1500
Daytona Beach FL 32114 E-mail _____
City State Zip

Speaking: For Against Information

Representing Conference of DCA Judges.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/31/12
Meeting Date

Topic Revising Age Limits for Judges & Justices Bill Number SJR 408
(if applicable)
Name Olin W. Shinholser Amendment Barcode _____
(if applicable)
Job Title Circuit Judge
Address 4305 Commerce Ave. Phone 863-402-6901
Sebring Florida E-mail OShinholser@jud10.flcourts.org
City State Zip

Speaking: For Against Information

Representing Florida Conference of Circuit Judges (Chair Elect)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-31-12

Meeting Date

Topic _____ Bill Number SB 498 (if applicable)
Name MARK P. FONTAINE Amendment Barcode _____ (if applicable)
Job Title EXECUTIVE DIRECTOR
Address 2868 MAHAN DRIVE Phone 878-2196
Street
TALLAHASSEE FL 32308 E-mail _____
City State Zip

Speaking: For Against Information

Representing FLORIDA ALCOHOL + DRUG ABUSE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

CourtSmart Tag Report

Room: LL 37

Case:

Caption: Subcommittee on Criminal and Civil Justice Appropriations

Type:

Judge:

Started: 1/31/2012 8:05:11 AM

Ends: 1/31/2012 8:27:49 AM

Length: 00:22:39

8:05:13 AM Meeting called to order.
8:05:55 AM Senator Lynn recognized to present SB 498.
8:06:42 AM Mark Fontaine waives in support.
8:07:29 AM Travis Hart, representing Senator Dean, recognized to present SB 882.
8:08:56 AM SB 882 passes favorably.
8:09:06 AM Kristin Carter, from Senator Rich's office, recognized to present SB 488.
8:11:17 AM Senator Fasano recognized to present CS/SB 872.
8:11:57 AM Senator Fasano presents CS/SB 872,
8:13:03 AM CS/SB 872 passes favorably.
8:15:04 AM Chairman Fasano makes statement regarding Feb. 1, 2012 meeting.
8:17:30 AM Chairman Fasano recognizes Alan Lawson to speak regarding SJR 408.
8:18:13 AM Senator Simmons recognized to present SJR 408.
8:18:31 AM Senator Simmons presents SJR 408.
8:21:21 AM Chairman Fasano asks how change will affect current judges?
8:21:38 AM Senator Simmons responds.
8:23:12 AM Senator Thrasher responds to Senator Simmons statement.
8:23:28 AM Chairman Fasano makes statement regarding prospective judges.
8:23:58 AM Senator Simmons states he will make commitment to draft amendment.
8:24:52 AM Senator Simmons responds regarding request for amendment for budget committee.
8:25:31 AM Senator Joyner makes statement regarding judgeship.
8:25:54 AM Senator Thrasher responds.
8:25:59 AM Senator Simmons responds.
8:26:20 AM Olin Shinholsor, Circuit Judge, Florida Conference of Circuit Judges, recognized.
8:27:08 AM Senator Storms moves to be shown favorably for 498, 882, 488 and 872.
8:27:33 AM Senator Bennett moves we rise.
8:27:37 AM Meeting adjourned.