

CS/SB 432 by **CJ, Flores (CO-INTRODUCERS) Diaz de la Portilla, Garcia, Lynn;** (Compare to CS/H 0189)
Unauthorized Copying of Recordings

CS/SB 504 by **CJ, Evers;** (Identical to CS/H 0173) Department of Juvenile Justice

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 432

INTRODUCER: Criminal Justice Committee and Senator Flores and others

SUBJECT: Unauthorized Copying of Recordings

DATE: January 23, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	Favorable
2.	Clodfelter	Cannon	CJ	Fav/CS
3.	Sneed	Sadberry	BJA	Pre-meeting
4.				
5.				
6.				

I. Summary:

Senate Bill 432 amends Florida statutes relating to the unauthorized copying of sound recordings, s. 540.11, F.S., and restitution, s. 775.089, F.S.

Specifically, the bill amends s. 540.11, F.S., to require a sentencing court to order restitution to any owner or lawful producer of a master recording who is the victim of a violation of the truth in labeling law set forth in s. 540.11(3)(a)3., F.S. It also provides that restitution can be made to a trade association representing the owner or lawful producer, and provides a definition for “trade association.”

Section 775.089, F.S., Florida’s restitution statute, is amended to include a trade association within the definition of “victim” for a violation of s. 540.11(3)(a)3., F.S., if authorized by the owner or lawful producer.

This bill amends ss. 540.11 and 775.089, F.S.

II. Present Situation:

Unauthorized Copying of Sound Recordings

The Copyright Clause of the United States Constitution authorizes Congress “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”¹ Until 1976, the power to regulate copyright was shared concurrently by both the federal and state government. Congress, however,

¹ U.S. CONST. art. I, s. 8, cl.8.

enacted the Copyright Act of 1976, which expressly preempted the rights and remedies available under state copyright law with respect to sound recordings fixed² after February 15, 1972.³

In an effort to curtail music piracy, states continue to regulate the unauthorized copying of recordings in primarily two ways. First, states control copyright infringement through the use of “unauthorized duplication” statutes. Under the federal copyright law, states can only regulate the unauthorized duplication of any fixed sound recording created prior to February 15, 1972. Accordingly, the application of such state statutes is limited to sound recordings fixed prior to the federally mandated cut-off date.

Second, states have also enacted “truth in labeling” laws or “true name and address” statutes. “In states that have enacted these laws, it is illegal to manufacture, sell, distribute, or possess a variety of items and commodities, with intent to sell, re-sell, distribute, or rent, that do not bear the name and address of the manufacturer.”⁴ With these statutes, application is much broader because they regulate *all* sound recordings. Federal preemption is not at issue because the objective of these statutes is to protect the consumer and public at large as opposed to protecting the rights of artists and recording companies, who are protected exclusively under federal copyright law.

Section 540.11, F.S., regulates the unauthorized copying of sound recordings in this state, and s. 540.11(3)(a)3., F.S., is a “true name and address statute” that provides the following:

It is unlawful . . . [k]nowingly, for commercial advantage or private financial gain to sell or resell, offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for such purposes, any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.⁵

Whether violation of the statute is a first degree misdemeanor or a third degree felony, and the maximum fine that can be adjudged, depends on the number of unauthorized articles involved in the offense.

Restitution

Section 775.089, F.S., deals with restitution. Florida courts have repeatedly provided that “the purpose of restitution is twofold: (1) to compensate the victim and (2) to serve the rehabilitative,

² 17 U.S.C. s. 101 (2006) (“A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is “fixed” for purposes of this title if a fixation of the work is being made simultaneously with its transmission.”).

³ 17 U.S.C. s. 301 (2006)

⁴ David Goldstone, PROSECUTING INTELLECTUAL PROPERTY CRIMES, 123 (2001).

⁵ Section 540.11(3)(a)3., F.S. (2011)

deterrent, and retributive goals of the criminal justice system.”⁶ The objective is to make the victim whole;⁷ thus, restitution must be ordered absent a finding by the court of “clear and compelling reasons not to order restitution.”⁸ As stated by the Florida Supreme Court, “restitution is an effective rehabilitative penalty because it forces the defendant to confront, in concrete terms, the harm his actions have caused.”⁹

Presently, under the restitution statute, a victim is defined as follows:

[A] person who suffers property damage or loss . . . as a result of the defendant’s offense or criminal episode, and also includes the victim’s estate if the victim is deceased, and the victim’s next of kin if the victim is deceased as a result of the offense. . .¹⁰

In short, those entitled to restitution are the victim or, if deceased, the victim’s estate and next of kin.

III. Effect of Proposed Changes:

Section 1 requires those who violate s. 540.11(3)(a)3., F.S., to make restitution to any owner or lawful producer of a master recording¹¹ who has suffered injury resulting from the offense, or to the authorized trade association representing that owner or lawful producer. Restitution will be based on the aggregate wholesale value of lawfully manufactured and authorized articles corresponding to the number of nonconforming articles involved in the offense unless a greater value can be proven. The order of restitution must also include investigative costs.

The bill emphasizes that it applies only to physical articles and not to electronic articles or digital files that are distributed or made available online.

“Trade association” is defined as “an organization founded and funded by businesses that operate in a specific industry to protect their collective interests.”

Section 2 amends the definition of the term “victim” in s. 775.089, F.S., to include a victim’s trade association if the offense is in violation of s. 540.11(3)(a)3., F.S., and the victim has granted the trade association written authorization to represent the victim’s interests in criminal legal proceedings and to collect restitution on the victim’s behalf.

Section 3 provides that this act shall take effect October 1, 2012.

⁶ *Kirby v. State*, 863 So. 2d 238, 243 (Fla. 2003); *State v. Castro*, 965 So. 2d 216, 218 (Fla. 3d DCA 2007); *L.H. v. State*, 803 So. 2d 862, 863-864 (Fla. 4th DCA 2002); *Koile v. State*, 902 So. 2d 822, 827 (Fla. 5th DCA 2005).

⁷ *Santana v. State*, 795 So. 2d 1112, 1113 (Fla. 5th DCA 2001).

⁸ Section 775.089(1)(a), F.S. (2011)

⁹ *Kirby*, 863 So. 2d at 243, quoting *People v. Bernal*, 101 Cal.App.4th 155, 123 Cal.Rptr.2d 622 (2002).

¹⁰ Section 775.089 (1)(c), F.S. (2011)

¹¹ Section 540.11(1), F.S., defines the term “master recording” as “the original fixation of sounds upon an article from which copies can be made.”

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

There will be a fiscal impact on any persons or entities that violate s. 540.11(3)(a)3., F.S., and are ordered to pay restitution.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill uses the term “lawful producer” without providing a definition. Given that this bill relates to the music industry, “lawful producer” may have a particularly confusing interpretation because “producer” is a music industry-specific term.

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 19, 2012:

- Adds language to emphasize that the bill applies only to physical articles and not to electronic articles or digital files that are distributed or available online.
- Defines the term “trade association.”

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 Senators Flores, Diaz de la Portilla, Garcia, and Lynn

591-02050-12

2012432c1

A bill to be entitled

An act relating to unauthorized copying of recordings; amending s. 540.11, F.S.; requiring restitution by persons who knowingly commit certain violations relating to recordings for commercial advantage or private financial gain; authorizing recovery by a trade association representing the owner or lawful producer of a recording; providing for calculation of a restitution amount; providing a definition; amending s. 775.089, F.S.; providing that a crime victim entitled to restitution may include a trade association representing the owner or lawful producer of a pirated recording in certain circumstances; providing an effective date.

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

Section 1. Subsection (3) of section 540.11, Florida Statutes, is amended to read:

540.11 Unauthorized copying of phonograph records, disk, wire, tape, film, or other article on which sounds are recorded.—

(3) (a) It is unlawful:

1. To sell or offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for any of these purposes any article with the knowledge, or with reasonable grounds to know, that the sounds thereon have been transferred without the consent of the owner.

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2. To sell or offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for any of these purposes any article embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, recorded without the consent of the performer.

3. Knowingly, for commercial advantage or private financial gain to sell or resell, offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for such purposes, any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

(b)1. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, by a fine of up to \$250,000, or both if the offense involves at least 1,000 unauthorized articles embodying sound or at least 65 unauthorized audiovisual articles during any 180-day period or is a second or subsequent conviction under either this subparagraph or subparagraph 2. of this subsection.

2. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, by a fine of up to \$150,000, or both if the offense involves more than 100 but less than 1,000 unauthorized articles embodying sound or more than 7 but less than 65 unauthorized audiovisual articles during any 180-day period.

3. A person who otherwise violates this subsection commits

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a misdemeanor of the first degree, punishable as provided in s. 775.082, by a fine of up to \$25,000, or both.

4. A person who violates subparagraph (a)3. shall be ordered to make restitution to any owner or lawful producer of a master recording that has suffered injury resulting from the crime or to the trade association representing such owner or lawful producer. The order of restitution shall be based on the aggregate wholesale value of lawfully manufactured and authorized articles corresponding to the number of nonconforming articles involved in the offense unless a greater value can be proven. The order of restitution shall also include investigative costs relating to the offense. As used in this subparagraph, the term "trade association" means an organization founded and funded by businesses that operate in a specific industry to protect their collective interests. The restitution obligation set forth in this subparagraph applies only to physical articles and does not apply to electronic articles or digital files that are distributed or made available online.

Section 2. Paragraph (c) of subsection (1) of section 775.089, Florida Statutes, is amended to read:

775.089 Restitution.—

(1)

(c) The term "victim" as used in this section and in any provision of law relating to restitution means each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, ~~and~~ the victim's next of kin if the victim is deceased as a result of the offense, and

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the victim's trade association if the offense is a violation of s. 540.11(3)(a)3. involving physical articles and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf.

Section 3. This act shall take effect October 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: CS/SB 504

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Juvenile Justice

DATE: January 24, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.	Irwin	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 authorizes the Department of Juvenile Justice (DJJ) to develop or contract for mother-infant programs within its continuum of care. The bill also defines a “mother-infant program” as a residential program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents. A mother-infant program must be licensed as a childcare facility under s. 402.308, F.S.

The bill also allows the DJJ to pay up to \$5,000 toward basic funeral expenses for a youth who dies in the department’s custody, if the parents or guardians are indigent and unable to pay and there is no other funding source available to pay these expenses. This decision to pay funeral expenses will be made at the discretion of the secretary of the department.

Finally, the bill deletes provisions in numerous sections in chapters 984 and 985, F.S., which reference serious or habitual juvenile offenders and the serious or habitual juvenile offender programs (SHOPs). This change conforms the statutes to the repeals made by legislation passed during the 2011 Regular Session.

The bill substantially amends the following sections of the Florida Statutes: 984.03, 985.03, 985.14, 985.441, 985.601, 985.0301, 985.045, 985.688, and 985.721.

II. Present Situation:

Mother-Infant Commitment Program

Section 985.441, F.S., provides various juvenile commitment options for the court. The court may commit an adjudicated delinquent youth as follows: to a licensed child-caring agency willing to receive the youth; to the Department of Juvenile Justice for placement in a program at a restrictiveness level defined in s. 985.03, F.S.; to the DJJ for placement in a program for serious or habitual juvenile offenders; or to the DJJ for placement in a program for juvenile sexual offenders.

Section 985.601(3)(a), F.S., requires the DJJ to develop or contract for various programs to provide rehabilitative treatment for adjudicated delinquent youth, including in part, the following: early intervention and prevention, diagnostic and classification assessments, individual and family counseling, community-based mental health treatment services, community-based residential and nonresidential programs, and environmental programs.

Currently, the DJJ operates a 20-bed mother-infant program in Miami-Dade County; however, there is no statutory provision for programs designed for pregnant girls or mothers with infants. Women in Need of Greater Strength (WINGS) for Life was established in 2001 as a residential commitment program for females in an educational environment. On July 1, 2006, WINGS became a residential commitment treatment program for 20 pregnant or postpartum females and their babies. “The mission of the WINGS for Life program is to celebrate diversity and womanhood by working to enhance the quality of life for the young woman and her child.”¹

The objectives of the program are to provide a structured and supervised transition from residential placement to the community and to closely monitor the youth to ensure public safety. The goal is to return these youths back into the mainstream of their communities with the skills to lead productive lives and successfully parent their children. The WINGS for Life program currently has the capacity to serve 20 women ages 14 through 19.²

Funeral Expenses for Juveniles in the Custody of the DJJ

A youth died while in the custody of the DJJ at the juvenile detention center in West Palm Beach in July of 2011. The DJJ tried to pay some of the funeral expenses, relying on its internal policy authorizing the department to pay up to a maximum of \$5,000 for funeral expenses when a youth dies in its custody and his or her parents are indigent and unable to pay. The Department of Financial Services denied the department’s payment because of the lack of express statutory authority allowing the DJJ to take such action.³

¹ Department of Juvenile Justice, WINGS for Life website, http://www.djj.state.fl.us/Residential/Facilities/south_facilities/WINGS_FOR_LIFE.html (last visited Dec. 19, 2011).

² *Id.*

³ Carol Marbin Miller, *Florida finance chief won’t pay for funeral of teen who died in lockup*, THE MIAMI HERALD, July 29, 2011, available at http://www.miamiherald.com/2011/07/29/2337038/florida_finance_chief_wont_pay.html (last visited on

According to the DJJ, when a state agency is responsible for the safety of a youth and that youth dies in the agency's custody, it may be beneficial to all concerned to offer, in some circumstances, financial assistance to parents who are unable to pay the youth's funeral expenses.⁴

Serious or Habitual Juvenile Offenders

The Legislature in 2011 passed legislation repealing numerous provisions relating to serious or habitual juvenile offenders and the serious or habitual offender programs.⁵ According to the DJJ, the SHOPS had a long history of being underused and the changes made by the 2011 Legislature more accurately reflected the practices of the DJJ.⁶

III. Effect of Proposed Changes:

The bill amends s. 985.601(3)(a), F.S., to authorize the Department of Juvenile Justice to develop or contract for mother-infant programs within its continuum of care. The bill also defines under s. 985.03, F.S., a "mother-infant program" as a residential program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents and which is operated or contracted by the DJJ. The mother-infant program must be licensed as a childcare facility under s. 402.308, F.S. It must also provide the necessary services and support to help the committed mother provide for her child's needs. If the mother agrees, the child may come with the mother into the program. This change will give express legislative authority for the current mother-infant program operating in Miami-Dade County and for any other future mother-infant programs.

The bill also amends s. 985.601, F.S., allowing the DJJ to pay up to \$5,000 toward basic funeral expenses for a youth who dies in the department's custody, if the parents or guardians are indigent and unable to pay and there is no other funding source available to pay these expenses. The decision to pay funeral costs will be at the discretion of the secretary of the department. This change will codify the DJJ's internal policy of paying funeral expenses under certain circumstances.

Finally, the bill deletes provisions in the following sections of chapters 984 and 985, F.S., which reference serious or habitual juvenile offenders and the serious or habitual juvenile offender programs: s. 984.03(48), F.S. (defines a SHOP); s. 985.14, F.S. (refers to assessment for placement in a SHOP); s. 985.441, F.S. (refers to juvenile placement in a SHOP); s. 985.601(3)(a), F.S. (refers to SHOPS); s. 985.0301, F.S. (refers to SHOPS); and s. 985.688(2), F.S. (refers to SHOPS). These changes conform the statutes with the repeals made by legislation

Dec. 19, 2011). See also the Department of Juvenile Justice, 2012 Legislative Analysis SB 504 (on file with the Senate Judiciary Committee).

⁴ Department of Juvenile Justice, 2012 Agency Proposal Juvenile Justice Reform (on file with the Senate Judiciary Committee).

⁵ CS/SB 618, ch. 2011-70, L.O.F.

⁶ 2011 Department of Juvenile Justice Legislative Priority Paper, updated Mar. 4, 2011 (on file with the Senate Judiciary Committee).

passed during the 2011 Regular Session. Technical changes are also made in s. 985.045, F.S., and s. 985.721, F.S., to conform statutory cross-references.

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:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under certain circumstances, SB 504 will help parents or guardians defray up to \$5,000 in funeral costs for youth who die in the custody of the Department of Juvenile Justice.

C. Government Sector Impact:

According to the DJJ, there will be no fiscal impact upon the department because of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on November 17, 2011:

- Adds a definition of “mother-infant program” in s. 985.03, F.S., and authorizes the Department of Juvenile Justice to develop or contract for such programs in s. 985.601, F.S., rather than amending s. 985.441, F.S., to allow the court to commit an adjudicated delinquent mother or expectant mother to such program.
- Deletes additional sections that reference serious or habitual juvenile offenders and the serious or habitual offender programs in chapters 984 and 985, F.S.

- 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 Evers

591-00991-12

2012504c1

A bill to be entitled

An act relating to the Department of Juvenile Justice; amending s. 984.03, F.S.; deleting obsolete references; amending s. 985.03, F.S.; creating and revising definitions; amending s. 985.14, F.S.; deleting obsolete references; amending s. 985.441, F.S.; deleting an obsolete provision; amending s. 985.601, F.S.; revising the types of diversified and innovative programs to provide rehabilitative treatment that may be developed or contracted for by the department, to include mother-infant programs and remove reference to an obsolete program; authorizing the department, at the secretary's discretion, to pay up to a specified amount toward the basic funeral expenses for a youth who dies while in the custody of the department and whose parents or guardians are indigent and for which no other funding is available; amending s. 985.0301, F.S.; deleting obsolete or unnecessary references and language; amending s. 985.045, F.S.; conforming a cross-reference; amending s. 985.688, F.S.; deleting obsolete references; amending s. 985.721, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsections (49) through (56) of section 984.03, Florida Statutes, are renumbered as subsections (48) through (55), respectively, and present subsection (48) of that section

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is amended to read:

984.03 Definitions.—When used in this chapter, the term: ~~(48) "Serious or habitual juvenile offender program" means the program established in s. 985.47.~~

Section 2. Subsection (29) of section 985.03, Florida Statutes, is amended, subsections (37) through (57) of that section are renumbered as subsections (38) through (58), respectively, and a new subsection (37) is added to that section, to read:

985.03 Definitions.—As used in this chapter, the term:

(29) "Juvenile justice continuum" includes, but is not limited to, delinquency prevention programs and services designed for the purpose of preventing or reducing delinquent acts, including criminal activity by criminal gangs, and juvenile arrests, as well as programs and services targeted at children who have committed delinquent acts, and children who have previously been committed to residential treatment programs for delinquents. The term includes children-in-need-of-services and families-in-need-of-services programs; conditional release; substance abuse and mental health programs; educational and career programs; recreational programs; community services programs; community service work programs; mother-infant programs; and alternative dispute resolution programs serving children at risk of delinquency and their families, whether offered or delivered by state or local governmental entities, public or private for-profit or not-for-profit organizations, or religious or charitable organizations.

(37) "Mother-infant program" means a residential program designed to serve the needs of juvenile mothers or expectant

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juvenile mothers who are committed as delinquents, which is operated or contracted by the department. A mother-infant program facility must be licensed as a child care facility under s. 402.308 and must provide the services and support necessary to enable each juvenile mother committed to the facility to provide for the needs of her infants who, upon agreement of the mother, may accompany them in the program.

Section 3. Paragraph (a) of subsection (3) of section 985.14, Florida Statutes, is amended to read:

985.14 Intake and case management system.—

(3) The intake and case management system shall facilitate consistency in the recommended placement of each child, and in the assessment, classification, and placement process, with the following purposes:

(a) An individualized, multidisciplinary assessment process that identifies the priority needs of each individual child for rehabilitation and treatment and identifies any needs of the child's parents or guardians for services that would enhance their ability to provide adequate support, guidance, and supervision for the child. This process shall begin with the detention risk assessment instrument and decision, shall include the intake preliminary screening and comprehensive assessment for substance abuse treatment services, mental health services, retardation services, literacy services, and other educational and treatment services as components, additional assessment of the child's treatment needs, and classification regarding the child's risks to the community and, for a serious or habitual delinquent child, shall include the assessment for placement in a serious or habitual delinquent children program under s.

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985.47. The completed multidisciplinary assessment process shall result in the predisposition report.

Section 4. Subsection (1) of section 985.441, Florida Statutes, is amended to read:

985.441 Commitment.—

(1) The court that has jurisdiction of an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing:

(a) Commit the child to a licensed child-caring agency willing to receive the child; however, the court may not commit the child to a jail or to a facility used primarily as a detention center or facility or shelter.

(b) Commit the child to the department at a restrictiveness level defined in s. 985.03. Such commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, monitoring for substance abuse, electronic monitoring, and treatment of the child and release of the child from residential commitment into the community in a postcommitment nonresidential conditional release program. If the child is not successful in the conditional release program, the department may use the transfer procedure under subsection (4).

~~(c) Commit the child to the department for placement in a program or facility for serious or habitual juvenile offenders in accordance with s. 985.47.~~

~~1. Following a delinquency adjudicatory hearing under s. 985.35 and a delinquency disposition hearing under s. 985.433 that results in a commitment determination, the court shall, on~~

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117 ~~its own or upon request by the state or the department,~~
 118 ~~determine whether the protection of the public requires that the~~
 119 ~~child be placed in a program for serious or habitual juvenile~~
 120 ~~offenders and whether the particular needs of the child would be~~
 121 ~~best served by a program for serious or habitual juvenile~~
 122 ~~offenders as provided in s. 985.47. The determination shall be~~
 123 ~~made under ss. 985.47(1) and 985.433(7).~~

124 ~~2. Any commitment of a child to a program or facility for~~
 125 ~~serious or habitual juvenile offenders must be for an~~
 126 ~~indeterminate period of time, but the time may not exceed the~~
 127 ~~maximum term of imprisonment that an adult may serve for the~~
 128 ~~same offense.~~

129 (c)(d) Commit the child to the department for placement in
 130 a program or facility for juvenile sexual offenders in
 131 accordance with s. 985.48, subject to specific appropriation for
 132 such a program or facility.

133 1. The child may only be committed for such placement
 134 pursuant to determination that the child is a juvenile sexual
 135 offender under the criteria specified in s. 985.475.

136 2. Any commitment of a juvenile sexual offender to a
 137 program or facility for juvenile sexual offenders must be for an
 138 indeterminate period of time, but the time may not exceed the
 139 maximum term of imprisonment that an adult may serve for the
 140 same offense.

141 Section 5. Paragraph (a) of subsection (3) of section
 142 985.601, Florida Statutes, is amended, and subsection (11) is
 143 added to that section, to read:

144 985.601 Administering the juvenile justice continuum.—

145 (3) (a) The department shall develop or contract for

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146 diversified and innovative programs to provide rehabilitative
 147 treatment, including early intervention and prevention,
 148 diversion, comprehensive intake, case management, diagnostic and
 149 classification assessments, individual and family counseling,
 150 shelter care, diversified detention care emphasizing
 151 alternatives to secure detention, diversified probation, halfway
 152 houses, foster homes, community-based substance abuse treatment
 153 services, community-based mental health treatment services,
 154 community-based residential and nonresidential programs, mother-
 155 infant programs, and environmental programs, ~~and programs for~~
 156 ~~serious or habitual juvenile offenders.~~ Each program shall place
 157 particular emphasis on reintegration and conditional release for
 158 all children in the program.

159 (11) At the secretary's discretion, the department is
 160 authorized to pay up to \$5,000 toward the basic funeral expenses
 161 for a youth who dies while in the custody of the department and
 162 whose parents or guardians are indigent and unable to pay such
 163 expenses and for which there is no other source of funding
 164 available.

165 Section 6. Subsection (5) of section 985.0301, Florida
 166 Statutes, is amended to read:

167 985.0301 Jurisdiction.—

168 (5) (a) Notwithstanding ss. 743.07, 985.43, 985.433,
 169 985.435, 985.439, and 985.441, and except as provided in ss.
 170 985.461 and, 985.465, ~~and 985.47~~ and paragraph (f), when the
 171 jurisdiction of any child who is alleged to have committed a
 172 delinquent act or violation of law is obtained, the court shall
 173 retain jurisdiction, unless relinquished by its order, until the
 174 child reaches 19 years of age, with the same power over the

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child which the court had before the child became an adult. For the purposes of s. 985.461, the court may retain jurisdiction for an additional 365 days following the child's 19th birthday if the child is participating in transition-to-adulthood services. The additional services do not extend involuntary court-sanctioned residential commitment and therefore require voluntary participation by the affected youth.

(b) Notwithstanding ss. 743.07 and 985.455(3), ~~and except as provided in s. 985.47,~~ the term of any order placing a child in a probation program must be until the child's 19th birthday unless he or she is released by the court on the motion of an interested party or on his or her own motion.

(c) Notwithstanding ss. 743.07 and 985.455(3), ~~and except as provided in s. 985.47,~~ the term of the commitment must be until the child is discharged by the department or until he or she reaches the age of 21 years. Notwithstanding ss. 743.07, 985.435, 985.437, 985.439, 985.441, 985.455, and 985.513, and except as provided in this section ~~and s. 985.47,~~ a child may not be held under a commitment from a court under s. 985.439, s. 985.441(1)(a) or (b), or s. 985.455 after becoming 21 years of age.

(d) The court may retain jurisdiction over a child committed to the department for placement in a juvenile prison or in a high-risk or maximum-risk residential commitment program to allow the child to participate in a juvenile conditional release program pursuant to s. 985.46. The jurisdiction of the court may not be retained after the child's 22nd birthday. However, if the child is not successful in the conditional release program, the department may use the transfer procedure

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under s. 985.441(4).

(e) The court may retain jurisdiction over a child committed to the department for placement in an intensive residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison or in a residential sex offender program, ~~or in a program for serious or habitual juvenile offenders as provided in s. 985.47 or s. 985.483~~ until the child reaches the age of 21. If the court exercises this jurisdiction retention, it shall do so solely for the purpose of the child completing the intensive residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison, or in a residential sex offender program, ~~or the program for serious or habitual juvenile offenders.~~ Such jurisdiction retention does not apply for other programs, other purposes, or new offenses.

(f) The court may retain jurisdiction over a child committed to a juvenile correctional facility or a juvenile prison until the child reaches the age of 21 years, specifically for the purpose of allowing the child to complete such program.

~~(g) 1. Notwithstanding ss. 743.07 and 985.455(3), a serious or habitual juvenile offender shall not be held under commitment from a court under s. 985.441(1)(c), s. 985.47, or s. 985.565 after becoming 21 years of age. This subparagraph shall apply only for the purpose of completing the serious or habitual juvenile offender program under this chapter and shall be used solely for the purpose of treatment.~~

~~2. The court may retain jurisdiction over a child who has been placed in a program or facility for serious or habitual~~

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233 ~~juvenile offenders until the child reaches the age of 21,~~
 234 ~~specifically for the purpose of the child completing the~~
 235 ~~program.~~

236 (g) ~~(h)~~ The court may retain jurisdiction over a juvenile
 237 sexual offender who has been placed in a program or facility for
 238 juvenile sexual offenders until the juvenile sexual offender
 239 reaches the age of 21, specifically for the purpose of
 240 completing the program.

241 (h) ~~(i)~~ The court may retain jurisdiction over a child and
 242 the child's parent or legal guardian whom the court has ordered
 243 to pay restitution until the restitution order is satisfied. To
 244 retain jurisdiction, the court shall enter a restitution order,
 245 which is separate from any disposition or order of commitment,
 246 on or prior to the date that the court's jurisdiction would
 247 cease under this section. The contents of the restitution order
 248 shall be limited to the child's name and address, the name and
 249 address of the parent or legal guardian, the name and address of
 250 the payee, the case number, the date and amount of restitution
 251 ordered, any amount of restitution paid, the amount of
 252 restitution due and owing, and a notation that costs, interest,
 253 penalties, and attorney ~~attorney's~~ fees may also be due and
 254 owing. The terms of the restitution order are subject to s.
 255 775.089(5).

256 (i) ~~(j)~~ This subsection does not prevent the exercise of
 257 jurisdiction by any court having jurisdiction of the child if
 258 the child, after becoming an adult, commits a violation of law.

259 Section 7. Subsection (5) of section 985.045, Florida
 260 Statutes, is amended to read:
 261 985.045 Court records.—

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262 (5) This chapter does not prohibit a circuit court from
 263 providing a restitution order containing the information
 264 prescribed in s. 985.0301(5)(h) ~~985.0301(5)(i)~~ to a collection
 265 court or a private collection agency for the sole purpose of
 266 collecting unpaid restitution ordered in a case in which the
 267 circuit court has retained jurisdiction over the child and the
 268 child's parent or legal guardian. The collection court or
 269 private collection agency shall maintain the confidential status
 270 of the information to the extent such confidentiality is
 271 provided by law.

272 Section 8. Subsection (2) of section 985.688, Florida
 273 Statutes, is amended to read:

274 985.688 Administering county and municipal delinquency
 275 programs and facilities.—

276 (2) A county or municipal government may develop or
 277 contract for innovative programs that provide rehabilitative
 278 treatment with particular emphasis on reintegration and
 279 conditional release for all children in the program, including
 280 halfway houses and community-based substance abuse treatment
 281 services, mental health treatment services, residential and
 282 nonresidential programs, and environmental programs, ~~and~~
 283 ~~programs for serious or habitual juvenile offenders.~~

284 Section 9. Subsection (2) of section 985.721, Florida
 285 Statutes, is amended to read:

286 985.721 Escapes from secure detention or residential
 287 commitment facility.—An escape from:

288 (2) Any residential commitment facility described in s.
 289 985.03(46) ~~985.03(45)~~, maintained for the custody, treatment,
 290 punishment, or rehabilitation of children found to have

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291 committed delinquent acts or violations of law; or

292

293 constitutes escape within the intent and meaning of s. 944.40

294 and is a felony of the third degree, punishable as provided in

295 s. 775.082, s. 775.083, or s. 775.084.

296 Section 10. This act shall take effect July 1, 2012.

CourtSmart Tag Report

Room: LL 37

Case:

Caption: Civil and Criminal Justice Appropriation Subcommittee

Type:

Judge:

Started: 2/1/2012 10:25:49 AM

Ends: 2/1/2012 10:43:04 AM

Length: 00:17:16

10:25:54 AM Meeting called to order.
10:26:03 AM Roll call.
10:26:22 AM Senator Flores recognized to present SB/CS 432.
10:26:37 AM Senator Flores explains strike all Amendment 837974 .
10:27:43 AM Senator Storms recognized.
10:28:34 AM Senator Flores responds.
10:29:23 AM Amendment adopted.
10:29:31 AM Paul Geller, representing GroovesHark, recognized.
10:30:15 AM Luis Carols Linares, Jr., Recording Industry Association of America, waives in support.
10:30:41 AM Senator Joyner recognized.
10:31:01 AM Senator Flores responds.
10:31:55 AM Continued discussion on CS/SB 432.
10:34:12 AM Senator Flores waives close.
10:34:22 AM Senator Thrasher moves to CS CS/SB 432.
10:34:35 AM CS/SB 432 passes.
10:34:42 AM Senator Evers recognized to present SB 504.
10:35:43 AM Nick Millar, Director, AMIKids, waives in support.
10:35:50 AM Ana Marie Sanchez with Dept. of Juvenile Justice waives in support.
10:36:16 AM SB 504 passes.
10:36:31 AM Chairman Fasano addresses next week's committee meeting schedule.
10:37:25 AM Senator Storms addresses clerks and electronic filing.
10:41:14 AM Chairman Fasano asks staff to add language to proviso.
10:41:30 AM Senator Bennett states he has a bill on e-filing.
10:41:58 AM Senator Joyner makes statement.
10:42:36 AM Senator Bennett motions to be shown voting favorably for SB 432 and SB 504.
10:42:48 AM Senator Thrasher moves we rise. Meeting adjourned.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/1/12
Meeting Date

Topic Restitution

Bill Number SB 432
(if applicable)

Name Luis Carlos Linares Jr.

Amendment Barcode _____
(if applicable)

Job Title VP, Anti-Piracy Legal Affairs

Address 1025 F Street N.W., 10th Floor

Phone (202) 489-2237

Washington, D.C. 20004
City State Zip

E-mail clinares@riag.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Recording Industry Association of America

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/1/12
Meeting Date

Topic _____

Bill Number 932
(if applicable)

Name Paul Geller

Amendment Barcode _____
(if applicable)

Job Title SVP External Affairs

Address 201 SW 2nd St.

Phone _____

Gainesville, FL
City State Zip

E-mail _____

Speaking: ☐ For ☐ Against ☐ Information

Representing GrooveShark

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)

Feb. 1, 2012

Meeting Date

Topic Crimt & Cr Justice AppropriationsBill Number SB 504
(if applicable)Name Ana Maria SanchezAmendment Barcode _____
(if applicable)Job Title Legislative Affairs DirectorAddress 2737 Centerview DrPhone 850-410-1097Tallahassee FL 32399
City State ZipE-mail anamaria.sanchez@djj.state
fl.usSpeaking: ☒ For ☐ Against ☐ InformationRepresenting DJJAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-1-12

Meeting Date

Topic DJJ BillBill Number CS/SB 504
(if applicable)Name Nick MillerAmendment Barcode _____
(if applicable)Job Title DirectorAddress 3302 Danmore DrivePhone 850-508-2971Tallahassee FL 32312
City State ZipE-mail nmiller@amkids.orgSpeaking: ☒ For ☐ Against ☐ InformationRepresenting AMKidsAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)