

SB 212 by Oelrich; (Compare to CS/H 0005) Parole for Juvenile Offenders

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SB 762 by Hays; (Compare to CS/2ND ENG/H 0517) Practice of Professions Regulated by Department of Business and Professional Regulation

516614	D	S	L	RCS	CJ, Hays	Delete everything after	02/09 05:10 PM
586280	AA	S	L	RCS	CJ, Hays	Delete L.254 - 256.	02/09 05:10 PM

CS/SB 834 by ED, ED; (Compare to CS/H 0949) Juvenile Justice Education and Workforce Programs

773988	D	S		RCS	CJ, Hays	Delete everything after	02/09 05:10 PM
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SB 864 by Altman; (Compare to CS/H 0681) Driving Under the Influence

878914	D	S		RS	CJ, Dean	Delete everything after	02/09 05:10 PM
100426	SD	S		FAV	CJ, Dean	Delete everything after	02/09 05:10 PM

SB 1172 by Detert; (Similar to CS/H 1285) Criminal Conduct

661700	D	S		RCS	CJ, Hays	Delete everything after	02/09 05:10 PM
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SB 1272 by Latvala; (Compare to CS/H 0947) Possession of a Firearm or Destructive Device During the Commission of an Offense

676490	A	S		RCS	CJ, Dean	Delete L.56 - 61:	02/09 05:10 PM
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SB 1290 by Negron; (Similar to H 0777) Criminal Penalties for Violations of Securities Laws

SB 1580 by Latvala; (Compare to CS/CS/H 1443) Local Administrative Action to Abate Public Nuisances and Criminal Gang Activity

SB 1846 by Evers; (Similar to CS/H 1173) Criminal Gang Prevention

197002	A	S		RCS	CJ, Evers	Delete L.103:	02/09 05:10 PM
402810	A	S		RCS	CJ, Evers	Delete L.458:	02/09 05:10 PM

CS/SB 2052 by CF, CF (CO-INTRODUCERS) Lynn; (Compare to CS/CS/H 1097) Sexually Violent Predators

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Dean, Vice Chair

MEETING DATE: Thursday, February 9, 2012

TIME: 1:15 —3:15 p.m.

PLACE: Mallory Horne Committee Room, 37 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 212 Oelrich (Compare CS/H 5)	Parole for Juvenile Offenders; Cites this act as the "Graham Compliance Act;" providing that a juvenile offender who was less than 18 years of age at the time of commission of a nonhomicide offense and who is sentenced to life imprisonment is eligible for parole if the offender has been incarcerated for a minimum period; requiring an initial eligibility interview to determine whether the juvenile offender has demonstrated maturity and reform for parole; providing criteria to determine maturity and reform; providing eligibility for a reinterview after a specified period for juvenile offenders denied parole, etc. CJ 02/09/2012 CJ 02/09/2012 Fav/CS CF BC	Fav/CS Yeas 5 Nays 0
2	SB 762 Hays (Compare CS/H 517)	Practice of Professions Regulated by Department of Business and Professional Regulation; Providing for the use of the standards of professional practice established by the Real Estate Appraisal Board in connection with the purchase of land to restore Lake Apopka; reducing the maximum amount of continuing education that may be required by the Department of Business and Professional Regulation or one of its boards to reactivate certain inactive licenses; exempting certain types of misconduct relating to auction businesses from being penalized as a felony; reducing the maximum amount of continuing education that may be required by the Regulatory Council of Community Association Managers to reactivate an inactive license; deleting a provision prohibiting a person from violating a lawful order or rule of the Real Estate Commission; deleting a provision subjecting a person to criminal penalties for engaging in willful or repeated violations of laws or rules regulating cosmetology, etc. RI 01/19/2012 Favorable CJ 02/09/2012 CJ 02/09/2012 Fav/CS BC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Thursday, February 9, 2012, 1:15 —3:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/SB 834 Education Pre-K - 12 / Education Pre-K - 12 (Compare CS/H 949)	Juvenile Justice Education and Workforce Programs; Providing legislative intent regarding juvenile justice education and workforce-related programs; requiring that the Department of Juvenile Justice verify that each juvenile justice education program meets specified minimum standards; creating the Florida Juvenile Justice Education Act; requiring that each juvenile justice education program involve the regional workforce board or economic development agency and local postsecondary institutions to determine the occupational areas for the education and workforce-related program; requiring that school districts and private providers be held accountable for student performance outcomes; requiring that each school district and private provider develop the education transition plan component during the course of the youth's stay in a juvenile justice program, etc. ED 11/17/2011 Workshop-Discussed ED 12/06/2011 Fav/CS CJ 01/12/2012 Temporarily Postponed CJ 02/09/2012 CJ 02/09/2012 Fav/CS BC	Fav/CS Yeas 4 Nays 0
4	SB 864 Altman (Compare CS/H 681)	Driving Under the Influence; Requiring that the court, as a condition of probation for a conviction of the offense of driving under the influence, impound or immobilize the vehicle that was operated by or was in the actual control of the defendant or require the defendant to install an interlock ignition device on all vehicles that are individually or jointly leased or owned and routinely operated by the defendant; requiring that a law enforcement officer issue to the person driving under the influence a notice of suspension of the person's driving privilege and a notice of the person's obligation to appear at a designated office of the Department of Highway Safety and Motor Vehicles under certain circumstances; authorizing a convicted person to elect to install an ignition interlock device on all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, in lieu of the 5- or 10-year license revocation period otherwise required by law, etc. CJ 02/09/2012 CJ 02/09/2012 JU BC	Amendment Adopted - Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Thursday, February 9, 2012, 1:15 —3:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 1172 Detert (Similar CS/H 1285)	Criminal Conduct; Defining the term "mental injury" with respect to the offenses of abuse, aggravated abuse, and neglect of a child; requiring that a person acting as an expert witness have certain credentials; redefining the term "crime" for purposes of crime victims compensation to include additional forms of injury; redefining the term "victim" to conform with the modified definition of the term "crime", etc. CJ 02/09/2012 CJ 02/09/2012 Fav/CS JU BC	Fav/CS Yeas 5 Nays 0
6	SB 1272 Latvala (Compare CS/H 947)	Possession of a Firearm or Destructive Device During the Commission of an Offense; Providing that an exception to the 10-year minimum term for persons convicted of certain offenses during which the person actually possessed a firearm or destructive device does not to apply to offenders convicted for possession of a firearm by a felon who have certain prior convictions, etc. CJ 02/09/2012 CJ 02/09/2012 Fav/CS BC	Fav/CS Yeas 4 Nays 1
7	SB 1290 Negron (Similar H 777)	Criminal Penalties for Violations of Securities Laws; Increasing the offense severity ranking for failing to register securities with the Office of Financial Regulation; specifying the offense severity ranking for the failure of a dealer, associated person, or issuer of securities to register with the Office of Financial Regulation, etc. CJ 02/09/2012 CJ 02/09/2012 Favorable BI BC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Thursday, February 9, 2012, 1:15 —3:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1580 Latvala (Compare CS/CS/H 1443)	Local Administrative Action to Abate Public Nuisances and Criminal Gang Activity; Authorizing a local administrative board to declare a place to be a public nuisance if the place is used on more than two occasions within a 6-month period as the site of the storage of a controlled substance with intent to sell or deliver the controlled substance; providing that an order entered against a person for a public nuisance expires after 1 year or at an earlier time if so stated in the order unless the person has violated the order during the term of the order; authorizing the board to extend the term of the order by up to 1 additional year and to impose a penalty if the board finds that the person violated the order; authorizing a local ordinance to provide for continuing jurisdiction over a place or premises that are subject to an extension of the administrative order, etc. CJ 02/09/2012 CJ 02/09/2012 Favorable CA BC	Favorable Yeas 5 Nays 0
9	SB 1846 Evers (Similar CS/H 1173)	Criminal Gang Prevention; Providing enhanced criminal penalties for certain trespassing offenses in school safety zones by a person convicted of certain gang-related offenses; providing enhanced criminal penalties for a person who intentionally causes, encourages, solicits, or recruits another person under a specified age to become a criminal gang member in certain circumstances; authorizing county and municipal detention facilities to designate an individual to be responsible for determining the gang status of each inmate entering the facility and to assess each current inmate for gang activity or gang affiliation; revising the criteria for application of the sentencing multiplier for offenses related to criminal gangs, etc. CJ 02/09/2012 CJ 02/09/2012 Fav/CS BC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Thursday, February 9, 2012, 1:15 —3:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	CS/SB 2052 Children, Families, and Elder Affairs / Children, Families, and Elder Affairs (Compare CS/H 1097)	Sexually Violent Predators; Requiring that the Department of Children and Family Services give priority to the assessment of persons who will be released from total confinement at the earliest date under certain circumstances; revising the period within which the department's multidisciplinary team is required to provide an assessment to the state attorney; prohibiting the introduction or attempted introduction of certain items into any facility for the detention of sexually violent predators; creating the Statewide Workgroup on the Conditional Release of Sexually Violent Predators, etc. CF 01/25/2012 Fav/CS CJ 02/09/2012 CJ 02/09/2012 Favorable BC	Favorable Yeas 5 Nays 0
TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
11	Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.		
	Criminal Conflict and Civil Regional Counsel - Third District Court of Appeal		
12	Zenobi, Eugene F. Esquire ()	07/01/2015	Recommend Confirm Yeas 5 Nays 0
	Criminal Conflict and Civil Regional Counsel - Fifth District Court of Appeal		
13	Deen, Jeffrey D. Esquire ()	07/01/2015	Recommend Confirm Yeas 5 Nays 0
	Criminal Conflict and Civil Regional Counsel - Fourth District Court of Appeal		
14	Ryan, Antony Parker Esquire (Riviera Beach)	07/01/2015	Recommend Confirm Yeas 5 Nays 0
	Capital Collateral Regional Counsel - Southern Region		
15	Dupree, Neal A. (Davie)	09/30/2012	Recommend Confirm Yeas 5 Nays 0
	Criminal Conflict and Civil Regional Counsel - Second District Court of Appeal		
16	Neymotin, Ita M. Esquire (Ft. Myers)	07/01/2015	Recommend Confirm Yeas 5 Nays 0

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 212

INTRODUCER: Criminal Justice Committee and Senator Oelrich

SUBJECT: Parole for Juvenile Offenders

DATE: February 9, 2012

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Clodfelter	Cannon	CJ	Fav/CS
2. _____	_____	CF	_____
3. _____	_____	BC	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" 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:

This bill makes inmates who were sentenced to life imprisonment for a nonhomicide offense committed when they were less than 18 years old eligible for resentencing after serving at least 25 years of the sentence. The bill includes factors that must be considered in evaluating whether the inmate has been sufficiently rehabilitated to be placed on probation for a minimum of five years.

This bill substantially amends section 947.16 of the Florida Statutes.

II. Present Situation:

In 2010, the United States Supreme Court held that it is unconstitutional for a minor who does not commit homicide to be sentenced to life imprisonment without the possibility of parole. The case was *Graham v. Florida*, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), which originated from crimes committed in Jacksonville. The Court's opinion stated:

“A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham

some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance.”

As explained below, any recent sentence to life imprisonment is a sentence to life without parole. Because the Court referred to release by executive clemency as a “remote possibility,” provisions for executive clemency apparently do not satisfy the requirement that there be a “realistic opportunity to obtain release.”

The Department of Corrections (department) reports that 198 inmates were sentenced to life imprisonment for nonhomicide offenses committed while they were under 18 years of age.¹ This includes inmates who were sentenced for attempted murder.² Ninety-three of these inmates also had a homicide for which they were separately sentenced.

Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S.³ However, the law provides a mechanism for juvenile offenders to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, a grand jury indictment is required to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.⁴

Parole

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission. Eligibility for parole has been abolished in Florida, but 439 offenders are currently on parole and 5,360 inmates are still eligible for parole consideration.⁵ These are inmates who:

- Committed an offense other than capital felony murder or capital felony sexual battery prior to October 1, 1983;
- Committed capital felony murder prior to May 25, 1994; or
- Committed capital felony sexual battery prior to October 1, 1995.

Inmates who were sentenced as adults for offenses committed prior to reaching 18 years of age are eligible for parole on the same basis as other inmates. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to

¹ Email from Department of Corrections dated February 7, 2012, updating statistics in the department’s Analysis of Senate Bill 92, September 8, 2011, page 2. Email is on file with the Senate Committee on Criminal Justice.

² In *Manuel v. State*, 48 So.3d 94 (Fla. 2d Dist. 2010), the Second District Court of Appeals held that attempted murder is a nonhomicide offense because the act did not result in the death of a human being.

³ Section 985.03(6), F.S., defines juvenile as “any unmarried person under the age of 18 who has not been emancipated by order of the court and who has been found or alleged to be dependent, in need of services, or from a family in need of services; or any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years.”

⁴ Section 985.58, F.S.

⁵ Parole Commission Analysis of Senate Bill 92, September 13, 2011, page 2.

terms and conditions established by the commission. Parolees are supervised by department probation officers.

A January 2008 Blueprint Commission and Department of Juvenile Justice report, “Getting Smart about Juvenile Justice in Florida,” included a recommendation that juveniles who received more than a 10 year adult prison sentence should be eligible for parole consideration. Florida Tax Watch also recommended parole consideration for inmates who were under 18 when they committed their offense, have served more than 10 years, were not convicted of capital murder, have no prior record, and demonstrated exemplary behavior while in prison.⁶

Clemency

Clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or part of the punishment for a crime. The power of clemency is vested in the Governor pursuant to Article IV, Section 8(a) of the Florida Constitution. All inmates, including those who are not eligible for parole, can apply for clemency.

The governor and members of the Cabinet are collectively the Clemency Board. The governor has discretion to deny clemency at any time for any reason and, with the approval of at least two members of the Cabinet, may grant clemency at any time and for any reason. There are several types of clemency, including pardon, commutation of sentence, remission of fines and forfeitures, restoration of authority to possess firearms, and restoration of civil rights. The Rules of Executive Clemency provide that a person is not eligible for commutation of sentence unless at least two years have elapsed since conviction and he or she has served at least one-third of any minimum mandatory sentence. However, the governor may waive these requirements in cases of extraordinary merit and compelling need.

The Parole Commission provides investigatory and administrative support to the Clemency Board, but the clemency process is independent of the parole process.

Resentencing as a Result of Graham Decision

In the absence of legislative or executive direction, some inmates who fall under the *Graham* decision have already petitioned for and received a resentencing hearing. There appears to be no consolidated source for obtaining the results of these resentencing hearings. However, the results of some resentencing hearings are known from news reports. These include:

- An inmate sentenced to life for the 2005 rape of a young girl when he was seventeen years old was resentenced to a split sentence of 7 years in prison followed by 20 years of probation.⁷
- An inmate sentenced to four life sentences for armed robberies committed in 2004 and 2005 when he was 14 and 15 years old was resentenced to a term of 30 years.⁸

⁶ Report and Recommendations of the Florida Tax Watch Government Cost Savings Task Force to Save More than \$3 Billion,” Florida Tax Watch, March 2010, p.47.

⁷ “Rapist who was serving life sentence will get second chance,” August 30, 2011, last viewed on November 7, 2011 at <http://www2.tbo.com/news/breaking-news/2011/aug/30/3/rapist-who-was-serving-life-resentenced-to-seven-y-ar-254096/>.

⁸ “Man who served 11 years fails to persuade Hillsborough judge to set him free,” October 6, 2011, last viewed on November 7, 2011 at <http://www.tampabay.com/news/courts/criminal/man-who-served-11-years-fails-to-persuade-hillsborough-judge-to-set-him/1195464>.

- An inmate sentenced to life for sexual battery with a weapon or force committed in 2008 when he was 14 was resentenced to a term of 65 years.⁹

III. Effect of Proposed Changes:

This bill, named the “Graham Compliance Act,” amends s. 947.16, F.S., to create an opportunity for juvenile offenders who have been sentenced to life imprisonment for a non-homicide offense to have a resentencing hearing. “Juvenile offender” is defined as an inmate who committed a non-homicide offense when he or she was less than 18 years of age. Consistent with the opinion in *Manuel v. State*, “non-homicide offense” is defined as an offense that did not result in the death of a human being.

A juvenile offender with a life sentence must be incarcerated for 25 years before becoming eligible for resentencing under the provisions of the bill. In addition, the offender must not have received an approved disciplinary report during the three years preceding the resentencing hearing.¹⁰ If a juvenile offender meets these criteria, the department must request the court of original jurisdiction to hold a resentencing hearing.

Nine of the 198 inmates who are serving a life sentence for committing a non-homicide offense when they were less than 18 years old have already served 25 years and one more has served 24 years. Six of the ten inmates have not had an approved disciplinary report during the last three years.¹¹

The court is required to consider a number of factors in deciding whether a juvenile offender has demonstrated maturity and reform and should be resentenced. These factors are:

- Whether the juvenile offender poses the same risk to society as at the time of original sentencing;
- The wishes of the victim or the opinions of the victim’s next of kin, with specific direction that the absence of the victim or next of kin at the hearing may not be a factor in the decision;
- Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or domination of another person;
- Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense;

⁹ “Teenage rapist Jose Walle resentenced to 65 years in prison,” November 18, 2010, last viewed on November 7, 2011 at <http://www.tampabay.com/news/courts/criminal/teenage-rapist-jose-walle-re-sentenced-to-65-years-in-prison/1134862>.

¹⁰ A disciplinary report is a document that initiates the process of disciplining an inmate for a violation of department rules. Upon receiving a disciplinary report, the inmate must be afforded administrative due process before the report is approved. The inmate’s due process rights include further investigation, a hearing to determine guilt or innocence and appropriate punishment, and final review by the warden or the regional director of institutions to approve, disapprove, or modify the result of the hearing. The department’s rules concerning disciplinary reports and the inmate disciplinary process are found in Chapter 33-601.301 – 33-601.314, Florida Administrative Code.

¹¹ *Supra* note 1.

- Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected her or his behavior;
- Whether the juvenile offender, while in the custody of the department, has aided inmates suffering from catastrophic or terminal medical, mental, or physical conditions or has prevented risk or injury to staff, citizens, or other inmates;
- Whether the juvenile offender has successfully completed any General Educational Development or other educational, technical, work, vocational, or self-rehabilitation program;
- Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before she or he committed the offense;
- The results of any mental health assessment or evaluation of the juvenile offender;
- The facts and circumstances of the offense, including its severity;
- Any factor that the initial sentencing court may have taken into account in relation to all other listed considerations which may be relevant to the court's determination.

The resentencing court must determine whether the juvenile offender can reasonably be believed to be fit to reenter society. If so, the court must issue an order modifying the sentence and placing the juvenile offender on probation for a minimum of 5 years. If the offender violates probation, the court can revoke the probation and impose any sentence that might have originally been imposed. In addition, a juvenile offender whose probation is revoked after resentencing will no longer be eligible for resentencing consideration pursuant to the provisions of the bill.

The bill provides that a juvenile offender who is not resentenced will be eligible for a resentencing hearing 7 years after the date of the denial and every 7 years thereafter. This 7 year interval is consistent with reinterview intervals for inmates who are currently eligible for parole for similar offenses. The requirement that the juvenile offender be free of disciplinary reports for 3 years prior to the first resentencing hearing does not appear to apply to subsequent resentencing hearings.

If passed, the bill will take effect upon becoming a law.

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:

The bill does not state whether it is intended to apply to sentences that were imposed for crimes that were committed prior to when it becomes law. A change in a statute is presumed to operate prospectively unless there is a clear showing that it is to be applied retroactively and its retroactive application is constitutionally permissible. *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999); *Bates v. State*, 750 So.2d 6, 10 (Fla. 1999). There are indications that this bill is intended to apply to sentences that have already been imposed. The fact that the original bill was to be cited as the “Graham Compliance Act,” arguably demonstrates legislative intent that the bill was to apply retroactively to provide a “meaningful opportunity for review” for offenders affected by the *Graham* decision. The bill in its current form applies to *Graham* defendants as well as others who received significant sentences for crimes committed when they were less than eighteen years old.

If it is determined that the bill is intended to be applied retroactively, the second step of the analysis is to determine whether retroactive application of the statute is constitutionally permissible. Article X, section 9 of the Florida Constitution (the “Savings Clause”) provides: “Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.” This means that the criminal statutes in effect at the time an offense was committed apply to any prosecution or punishment for that offense. *See State v. Smiley*, 966 So.2d 330 (Fla. 2007).

The Savings Clause prevents retroactive application of a statute that affects prosecution or punishment for a crime, but does not prohibit retroactive application of a statute that is procedural or remedial in nature. Both categories are represented by elements of the bill:

- (1) The aspect of the bill that provides for a resentencing hearing is procedural or remedial in nature. Therefore, it can be applied retroactively to the extent that it allows resentencing to a punishment that would have been permissible under the law in effect at the time the offense was committed.
- (2) The bill also includes a clause that could affect the punishment for a crime: “Notwithstanding any other law, a juvenile offender may be eligible for a reduced or suspended sentence under this section.” Absent the Savings Clause, this would allow imposition of a sentence that was not permissible when the offense was committed (such as sentencing to less than a statutory minimum mandatory sentence). However, it is well-established that the Savings Clause prohibits application of a statutory reduction in the maximum sentence for a crime to be applied to an offense that was committed before the change. *See, e.g., Castle v. Sand*, 330 So.2d 10 (Fla. 1976) (reduction of maximum sentence for arson from 10 years to 5 years could not be applied to benefit defendant who committed offense before statutory change).

Therefore, it appears that the provision for a resentencing hearing can be applied to offenses committed before the effective date of the bill. However, the Saving Clause would prevent a reduction of sentence below what was permissible at the time of the offense.¹²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

C. Government Sector Impact:

The Criminal Justice Impact Conference reviewed the impact of substantively-identical House Bill 5 on the state prison population and determined that it would result in an insignificant savings.

VI. Technical Deficiencies:

It is recommended that the bill be amended to clarify whether it is to apply retroactively.

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 February 9, 2012:

Provides for a resentencing hearing by the sentencing court and potential release on probation rather than consideration for parole by the Parole Commission.

B. Amendments:

None.

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

¹² It does not appear possible for a minor who commits a nonhomicide offense to be subject to a mandatory sentence to life without the possibility of parole. However, in the case of a *Graham* defendant it can be anticipated that the courts would determine that the federal constitutional requirements under the Eighth Amendment would trump Florida's Savings Clause.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2012	.	
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The Committee on Criminal Justice (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as the "Graham Compliance Act."

Section 2. Juvenile offender resentencing.-

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

(a) "Juvenile offender" means an offender who was younger than 18 years of age at the time the nonhomicide offense was committed.

(b) "Nonhomicide offense" means an offense that did not



932794

13 result in the death of a human being.

14 (2) Notwithstanding any other law to the contrary, a
15 juvenile offender who is sentenced to life imprisonment for a
16 nonhomicide offense may be eligible for resentencing as provided
17 in this section.

18 (3) Before a juvenile offender may be eligible for
19 resentencing under this section, she or he must have served 25
20 years of incarceration for the offense for which resentencing is
21 sought. The initial resentencing hearing and any subsequent
22 resentencing hearing may occur only if the juvenile offender has
23 received no approved disciplinary reports for at least 3 years
24 before the scheduled resentencing hearing.

25 (4) The Department of Corrections shall screen juvenile
26 offenders committed to the department for their eligibility to
27 participate in a resentencing hearing using the criteria in
28 subsection (3). If a juvenile offender meets the eligibility
29 requirements, the department shall request the court of original
30 jurisdiction to hold a resentencing hearing for that juvenile.

31 (5) In determining whether a juvenile offender has
32 demonstrated maturity and reform and whether she or he should be
33 resentenced, the court conducting a resentencing hearing must
34 consider all of the following:

35 (a) Whether the juvenile offender poses the same level of
36 risk to society as at the time of initial sentencing.

37 (b) The wishes of the victim or the opinions of the
38 victim's next of kin. The absence of the victim or victim's next
39 of kin from the resentencing hearing may not be a factor in the
40 court's determination under this section.

41 (c) Whether the juvenile offender was a relatively minor



932794

42 participant in the criminal offense or acted under extreme
43 duress or domination of another person.

44 (d) Whether the juvenile offender has shown sincere and
45 sustained remorse for the criminal offense.

46 (e) Whether the juvenile offender's age, maturity, and
47 psychological development at the time of the offense affected
48 her or his behavior.

49 (f) Whether the juvenile offender, while in the custody of
50 the department, has aided inmates suffering from catastrophic or
51 terminal medical, mental, or physical conditions or has
52 prevented risk or injury to staff, citizens, or other inmates.

53 (g) Whether the juvenile offender has successfully
54 completed any General Educational Development or other
55 educational, technical, work, vocational, or self-rehabilitation
56 program.

57 (h) Whether the juvenile offender was a victim of sexual,
58 physical, or emotional abuse before she or he committed the
59 offense.

60 (i) The results of any mental health assessment, risk
61 assessment, or evaluation of the juvenile offender.

62 (j) The facts and circumstances of the offense for which
63 the life sentence was imposed, including the severity of the
64 offense.

65 (k) Any factor that the sentencing court may have taken
66 into account at the initial sentencing hearing in relation to
67 all other considerations listed in this section which may be
68 relevant to the court's determination.

69 (6) If the court determines at the resentencing hearing
70 that the juvenile offender can reasonably be believed to be fit



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71 to reenter society, the court must issue an order modifying the
72 sentence imposed and placing the offender on probation for a
73 term of at least 5 years. If the juvenile offender violates the
74 conditions of her or his probation, the court may revoke
75 probation and impose any sentence that it might have originally
76 imposed and the juvenile offender is no longer eligible for a
77 resentencing hearing pursuant to this section.

78 (7) A juvenile offender who is not resentenced under this
79 section at the initial resentencing hearing is eligible for a
80 resentencing hearing 7 years after the date of the denial and
81 every 7 years thereafter.

82 Section 3. This act shall take effect upon becoming a law.

83
84 ===== T I T L E A M E N D M E N T =====

85 And the title is amended as follows:

86
87 Delete everything before the enacting clause
88 and insert:

89 A bill to be entitled
90 An act relating to juvenile offenders; providing a
91 short title; providing definitions; providing that a
92 juvenile offender who was younger than 18 years of age
93 at the time of commission of a nonhomicide offense and
94 who is sentenced to life imprisonment is eligible for
95 resentencing if the offender has been incarcerated for
96 a minimum period; requiring an initial resentencing
97 hearing to determine whether the juvenile offender has
98 demonstrated maturity and reform for resentencing;
99 providing criteria to determine maturity and reform;



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100 requiring a minimum term of probation for any juvenile
101 offender resentenced by the court; providing
102 consequences for probation violations; providing
103 eligibility for a subsequent resentencing hearing
104 after a specified period for juvenile offenders denied
105 resentencing; providing an effective date.

By Senator Oelrich

14-00226-12

2012212__

A bill to be entitled

An act relating to parole for juvenile offenders; providing a short title; amending s. 947.16, F.S.; providing definitions; providing that a juvenile offender who was less than 18 years of age at the time of commission of a nonhomicide offense and who is sentenced to life imprisonment is eligible for parole if the offender has been incarcerated for a minimum period; requiring an initial eligibility interview to determine whether the juvenile offender has demonstrated maturity and reform for parole; providing criteria to determine maturity and reform; providing eligibility for a reinterview after a specified period for juvenile offenders denied parole; providing an effective date.

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

Section 1. This act may be cited as the "Graham Compliance Act."

Section 2. Subsections (2) through (6) of section 947.16, Florida Statutes, are renumbered as subsections (3) through (7), respectively, and a new subsection (2) is added to that section to read:

947.16 Eligibility for parole; initial parole interviews; powers and duties of commission; juvenile offender eligibility.—

(2) (a) As used in this subsection, the term:

1. "Juvenile offender" means an offender who was less than 18 years of age at the time the nonhomicide offense was

14-00226-12

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committed.

2. "Nonhomicide offense" means an offense that did not result in the death of a human being.

(b) Notwithstanding subsection (1) or any other provision of law to the contrary, a juvenile offender who is sentenced to life imprisonment for a nonhomicide offense may be eligible for parole as provided in this subsection.

(c) Before a juvenile offender may be granted parole under this subsection, she or he must have an initial eligibility interview to determine whether she or he has demonstrated maturity and reform while in the custody of the department to justify granting parole. The initial eligibility interview may occur only after the juvenile offender has served 25 years of incarceration for the offense for which parole is sought. The initial eligibility interview and any subsequent eligibility interviews may occur only if the juvenile offender has received no approved disciplinary reports for at least 3 years before the scheduled eligibility interview.

(d) In determining whether the juvenile offender has demonstrated maturity and reform and whether she or he should be granted parole, the commission must consider all of the following:

1. The wishes of the victim or the opinions of the victim's next of kin.

2. Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or domination of another person.

3. Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.

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59 4. Whether the juvenile offender's age, maturity, and
60 psychological development at the time of the offense affected
61 her or his behavior.

62 5. Whether the juvenile offender, while in the custody of
63 the department, has aided inmates suffering from catastrophic or
64 terminal medical, mental, or physical conditions or has
65 prevented risk or injury to staff, citizens, or other inmates.

66 6. Whether the juvenile offender has successfully completed
67 any General Educational Development or other educational,
68 technical, work, vocational, or self-rehabilitation program.

69 7. Whether the juvenile offender was a victim of sexual,
70 physical, or emotional abuse before she or he committed the
71 offense.

72 8. The results of any mental health assessment or
73 evaluation of the juvenile offender.

74 (e) A juvenile offender who is not granted parole under
75 this subsection after an initial eligibility interview is
76 eligible for a reinterview 7 years after the date of the denial
77 of the grant of parole and every 7 years thereafter.

78 Section 3. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12

Meeting Date

Topic PAROLE for Juvenile Offenders

Bill Number SB 212
(if applicable)

Name TIM GABBARD

Amendment Barcode _____
(if applicable)

Job Title _____

Address 924 N. GADSDEN ST.

Phone 850-219-3631

Street

Tallahassee FL 32317

City

State

Zip

E-mail gabb221@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing The Florida Police Chiefs Assn

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)

2/9/12

Meeting Date

Topic Juvenile Sentencing Bill Number 212
Name Nancy Daniels Amendment Barcode _____ (if applicable)
Job Title Public Defender, 2nd Judicial Circuit
Address Leon County Courthouse, 301 S. Monroe St. Phone 850 606-1010
Tallahassee FL 32301 E-mail nancy.daniels@
City State Zip flpd2.com
Speaking: ☐ For ☒ Against ☐ Information
Representing Florida Public Defender Association
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

02109112

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

Meeting Date

Topic

Parole for Juveniles

Bill Number

SB 0212

(if applicable)

Name

John Bonnevise

Amendment Barcode

(if applicable)

Job Title

Captain / Deputy Sheriff

Address

P.O. Box 569

Phone

352 736 5961

Street

City

DeFuniak Springs

State

Zip

E-mail

Speaking:

☒

For

☐

Against

☐

Information

Representing

Volusia County Sheriff's Office

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)

02/09/12

Meeting Date

Topic PAROLE FOR JUVENILES Bill Number SB 0212
Name BRYAN BARNARD Amendment Barcode _____
Job Title LIEUTENANT VOLUSIA COUNTY SHERIFF'S OFFICE (if applicable)
Address 123 W. INDIANA AVE Phone 386-736-5999
City DELAND State FL Zip 32721 E-mail —
Speaking: ☒ For ☐ Against ☐ Information
Representing FL SHERIFF'S ASSOCIATION
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

2-9-12

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

Meeting Date

Topic Parole for Juveniles

Bill Number 212
(if applicable)

Name Frank Myersmith

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2901 Sh Bradford
Street

Phone 576 5858

Tall FL
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Sheriffs Assoc

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)

2-9-12
Meeting Date

Topic SB

Bill Number SB 212
(if applicable)

Name Bruce Colton

Amendment Barcode _____
(if applicable)

Job Title State Atty. 19th Circuit

Address 411 S. 2nd Street
Street
FT. Pierce, FL 34950
City State Zip

Phone _____

E-mail BColton@State19.org

Speaking: ☒ For ☐ Against ☐ Information

Representing F P A A

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)

2/9/12
Meeting Date

Topic Juvenile Parole

Bill Number SB 212
(if applicable)

Name Haley Van Erem

Amendment Barcode 932794
(if applicable)

Job Title Law Student-Public Interest Law Center

Address 425 W. Jefferson St.

Phone 605-695-4247

Tallahassee FL 32304
City State Zip

E-mail haley.vanerem@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 762

INTRODUCER: Criminal Justice Committee and Senator Hays

SUBJECT: Practice of Professions Regulated by Department of Business and Professional Regulation

DATE: February 13, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.	Clodfelter	Cannon	CJ	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" 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 revises references to the professional standards with which registered, licensed, and certified appraisers are required to comply. It requires the Florida Real Estate Appraisal Board to adopt rules that establish standards of professional practice that meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation.

The bill also reduces the continuing education hours required to reactivate an inactive license to only one renewal cycle of hours, instead of the hours required for each year the license was inactive, for the following professions: community association managers, home inspectors, providers of mold-related services, cosmetologists, architects, landscape architects, construction contractors, and electrical and alarm system contractors. The bill exempts certified public accountants licensed under ch. 473, F.S., and real estate brokers, sales associates, real estate schools, and appraisers licensed under ch. 474, F.S. These professionals would continue to be required to complete the continuing education required for each two-year period of licensure in order to reactivate an inactive license. The bill also clarifies that the Board of Architecture and

Interior Design may only approve continuing education for an interior designer that builds upon the basic knowledge of interior design.

The bill repeals provisions that provide criminal penalties for violations of agency rules and the chapters of the Florida Statutes that govern the specified professions. Under the bill the following professions would not be subject to criminal penalties for such violations: auctioneers, real estate professionals, barbers, and cosmetologists. However, the bill limits the application of criminal penalties for specified violations by auctioneers that relate to financial dishonesty or malfeasance.

The bill revises the provisions related to the regulation of appraisal management companies banks, credit unions, or other lending institutions that own and operate an internal appraisal office, business unit, or department. This is consistent with the federal Dodd Frank Act, which exempts from state regulation financial institutions that own or operate an internal appraiser office, business, unit, or department and appraisal management companies that are owned and controlled by a subsidiary of a financial institution.

In addition, the bill:

- Waives the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for military veterans who apply to the department for a license within 24 months of being honorably discharged from service;
- Authorizes filing of a lien for collection services expenses that are reasonably related to the collection of a delinquent account rendered by a community association manager or management firm on behalf of a community association;
- Clarifies the confidentiality of certain financial documents for employee leasing companies;
- Permits applicants for a real estate appraiser's certification to use the results of national examinations required for the license that were obtained more than 24 months after the date of the examination;
- Permits real estate continuing education instructors to complete their continuing education through distance learning and permits real estate schools to offer any course through distance learning;
- Allows greater reciprocity of architect licensees and modifies the internship requirements to make Florida consistent with other states to improve licensing mobility for architects;
- Conforms with exemptions for other utilities by removing a requirement for persons repairing, maintaining, removing, or disposing of asbestos-containing pipe or conduit used for gas service to be licensed as an asbestos consultant or contractor; and
- Expands exemptions regarding mold-related services to include landscape architects if they are not holding themselves out for hire to the public using names implying that they perform mold assessment services or stating or implying licensure under Part XVI.

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

This bill substantially amends the following sections of the Florida Statutes: 373.461, 455.213, 455.271, 468.391, 468.4338, 468.439, 468.525, 468.8317, 468.841, 468.8417, 469.002, 475.25, 475.42, 475.451, 475.611, 475.615, 475.617, 475.6171, 475.6175, 475.6235, 475.624, 475.6245,

475.626, 475.628, 476.194, 477.0212, 477.0265, 481.217, 481.209, 481.211, 481.213, 481.315, 489.116, and 489.519.

II. Present Situation:

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.¹ The department is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following eleven divisions within the department:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
- Division of Real Estate.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.

Professional Boards

Section 20.165(4)(a), F.S., establishes the following boards and professions within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

¹ Chapter 93-220, L.O.F.

The Pilot Rate Review Committee is established under the Board of Pilot Commissioners.² Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

The Florida State Boxing Commission³ and the Regulatory Council of Community Managers⁴ are also housed within the department. The department also has regulatory oversight responsibilities over the following professions:

- Child labor under part I of ch. 450, F.S.
- Farm labor contractors under part III of ch. 450, F.S.
- Talent agencies under part VII of ch. 468, F.S.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Continuing Education

Section 455.271(4), F.S., provides that an inactive licensee may change his or her status to active provided the licensee meets all requirements for active status, pays the appropriate fees, and meets all continuing education requirements.

Community Association Managers

Section 468.4338, F.S., requires the Regulatory Council of Community Association Managers to prescribe by rule continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license may not exceed 10 classroom hours for each year the license was inactive.

Home Inspectors

Section 468.8317(2), F.S., provides that the department may prescribe rules that require continuing education requirements as a condition to reactivate an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive.

² Section 310.151, F.S.

³ Section 548.003, F.S.

⁴ Section 468.4315, F.S.

Mold-Related Services

Section 468.8417(2), F.S., provides that the department may prescribe rules that require continuing education requirements as a condition to reactivate an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive. Section 468.841, F.S., provides exemptions from Part XVI of ch. 468, F.S., which concerns mold-related services.

Cosmetology

Section 477.019(7)(a), F.S., requires the Board of Cosmetology to prescribe by rule continuing education requirements, not to exceed 16 hours biennially,⁵ as a condition for renewal of a license or registration. Section 477.0212, F.S., provides that a cosmetologist's license that has become inactive may be reactivated upon application to the department, which would require the inactive licensee to complete 16 hours of continuing education coursework for each cycle he or she was inactive.

Architecture and Interior Design

Section 481.215, F.S., provides that the continuing education requirements for renewal of architect and interior designer licenses shall be no less than 20 hours per license cycle. Section 481.217(1), F.S., provides that the continuing education requirement for reactivating an architect's license may not exceed 12 hours for each year the license was inactive. The statute provides that the minimum continuing education requirement for reactivating an interior designer's license shall be the number of hours required for the most recent license cycle plus half of the requirements for each year or part in which the license was inactive.

Landscape Architecture

Section 481.315(1), F.S., provides that continuing education requirements for renewing an inactive landscape architect's license may not exceed 12 hours for each year the license was inactive.

Construction

Section 489.115, F.S., provides that the continuing education requirement for renewal of a construction contractor's license shall be at least 14 hours per license cycle. Section 489.116(6), F.S., provides that an inactive licensee shall comply with the same continuing education requirements that are imposed on an active licensee.

Electrical or Alarm Contracting

Section 489.517(3), F.S., provides that the continuing education requirement for renewal of an electrical or alarm contractor's license shall be at least 14 hours per license cycle. Section 489.519(1), F.S., provides that the continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the certificate or registration was inactive.

⁵ Licenses are renewed on a two-year cycle.

Community Association Managers

Section 468.432, F.S., requires licensing of community association managers and community association management firms. “Community association” is defined in s. 468.431(1), F.S., as a:

“ . . . (r)esidential homeowners’ association in which membership is a condition of ownership of a unit in a planned unit development, or of a lot for a home or a mobile home, or of a townhouse, villa, condominium, cooperative, or other residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel.”

Exemptions from Requirements Concerning Mold-Related Services

Section 468.841(d), F.S., exempts certain licensed persons or businesses from complying with requirements in Part XVI of ch. 468, F.S., relating to mold assessment. The exemption applies if the licensed person or business is not holding itself out for hire to the public using names implying that they perform mold assessment services or stating or implying licensure under Part XVI.

Real Estate Schools-Distance Learning

Section 475.17(2)(a)2., F.S., authorizes the Florida Real Estate Commission to approve distance learning courses as an option to classroom hours as satisfactory completion of continuing education requirements. Real estate schools have the option of providing classroom courses, distance learning courses, or both. A satisfactory completion of a distance learning course must require the satisfactory completion of a timed distance learning course examination. Such examination does not need to be monitored or given at a centralized location.

Appraisal Management Companies

Individual real estate appraisers are regulated under part II of ch. 475, F.S., by the Florida Real Estate Appraisal Board within the department. Section 475.6235, F.S., requires the registration of Appraisal Management Companies.

“Appraisal management company,” is defined in s. 475.611(1)(c), F.S., to mean a person⁶ who performs appraisal management services.

The term “appraisal management services” is defined in s. 475.611(1)(d), F.S., to mean the coordination or management of appraisal services for compensation by:

1. Employing, contracting with, or otherwise retaining one or more appraisers to perform appraisal services for a client; or
2. Acting as a broker or intermediary between a client and one or more appraisers to facilitate the client’s employing, contracting with, or otherwise retaining the appraisers.

Section 475.6235(1), F.S., provides that a person may not engage in appraisal services for compensation or advertise themselves as an appraisal management company or use the titles “appraisal management company,” “appraiser cooperative,” “appraiser portal,” or “mortgage

⁶ Section 1.01(3), F.S., defines the word “person” to include “individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.”

technology company,” or any abbreviation or words to that effect, unless the person is registered with the department as an appraisal management. A person may not engage in appraisal management services for compensation in this state, advertise or represent herself or himself as an appraisal management company, or company under this section.

Employees of the appraisal management company are not required to obtain a separate registration.

The “Dodd-Frank Wall Street Reform and Consumer Protection Act (Frank-Dodd Act)”⁷ permits states to regulate appraisal management companies. However, an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency is not required to register with a state.⁸

Criminalization of Rule Violations

The practice acts for several professions provide criminal penalties for violations of agency rules and the chapters of the Florida Statutes that govern the specified professions. The following professions are subject to criminal penalties for such violations:

- Auctioneers in s. 468.391, F.S.;
- Real estate professionals in s. 475.42(1)(e), F.S.;
- Barbers in s. 476.194(1)(b), F.S.; and
- Cosmetologists in s. 477.0265(1)(c), F.S.

For each of these professions, a violation of an agency rule of the governing chapter would be punishable as a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. If the violation is by a corporation licensed by the Florida Real Estate Commission, the corporation may be subject to a misdemeanor of the second degree, punishable as provided in s. 775.083, F.S.

Section 775.082, F.S., provides that a second degree misdemeanor is punishable by incarceration for not longer than 60 days in jail.⁹ Section 775.083, F.S., provides that a second degree misdemeanor can also be punishable by a fine of not more than \$500.¹⁰

III. Effect of Proposed Changes:

Military Veterans-Fee Waiver

The bill creates s. 455.213(12), F.S., to waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran who applies to the department for a license within 24 months of being honorably discharged. (Section 34).

Lien for Collection Service Expenses of Community Associations

The bill creates s. 468.439, F.S., in Part VIII (Community Association Management) of ch. 468, F.S. This new section authorizes the filing of a lien for collection services expenses that are

⁷ “Dodd-Frank Wall Street Reform and Consumer Protection Act” Pub. L. 111-203 (2010).

⁸ *Id.* at s. 1473.

⁹ *See* s. 775.082(4)(b), F.S.

¹⁰ *See* s. 775.083(1)(e), F.S.

reasonably related to the collection of a delinquent account rendered by a community association manager or a community association management firm on behalf of a community association. The collection expenses may be secured by filing a claim of lien if the collection services expense is: (1) specified by amount in a written agreement with the community association manager or management firm; and (2) payable to the community association manager or management firm as a liquidated sum.

The new section applies to collection expenses for delinquent accounts owed to community associations governed by chapters 617 (corporations not for profit), 718 (condominiums), 719 (cooperatives), 720 (homeowner's associations), 721 (vacation and timeshare plans), or 723 (mobile home lot tenancies).

It is not clear whether a separate lien would have to be filed for collection expenses in addition to filing of a lien pertaining to the debt for which the collection services are rendered. However, the new section would allow filing a lien for collection expenses even if the underlying debt has been satisfied.

Employee Leasing Companies

The bill amends s. 468.525, F.S., to clarify the confidentiality of certain financial documents for employee leasing companies. (Section 3).

Exemption from Licensing As Asbestos Consultant or Contractor

Section 469.002, F.S., is amended to remove a requirement that persons repairing, maintaining, removing, or disposing of asbestos-containing pipe or conduit used for gas service must be licensed as an asbestos consultant or contractor. This removes duplication of regulation where natural gas utilities are subject to federal and state regulations. The statute already includes such an exemption for pipe or conduit that is used for electrical, electronic, communications, sewer, or water service. (Section 7).

Professional Practice Standards for Appraisers

The bill amends s. 373.461(5)(c), F.S., which relates to the purchase of agricultural lands by the St. Johns River Water Management District, to reference standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of real estate appraisals, instead of referencing the Uniform Standards of Professional Appraisal Practices. (Section 29).

The bill amends s. 475.25(1), F.S., which provides the disciplinary provisions for real estate brokers, sales associates, and real estate schools to replace references to the Uniform Standards of Professional Appraisal Practice with the standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board. (Section 21).

The bill amends s. 475.611, F.S., as follows:

- Section 475.611(1)(c), F.S., is amended to revise the definition of “appraisal management company” by incorporating the provision from s. 475.6235(1), F.S., which prohibits the use of the titles “appraisal management company,” “appraiser cooperative,” “appraiser portal,” or

“mortgage technology company,” or other terms unless the person is registered with the department as an appraisal management company.

- Section 475.611(1)(d), F.S., is amended to reference “licensed or certified appraisers” instead of “appraisers.”
- Section 475.611(1)(t), F.S., is created to define the term “subsidiary” to mean an organization that is controlled by a financial institution that is regulated by a federal agency. (Section 31).

The bill amends s. 475.615, F.S., to replace references to the Uniform Standards of Professional Appraisal Practice with the standards of professional practice, including standards for the development or communication of real estate appraisal, adopted by rule of the Florida Real Estate Appraisal Board with which an applicant must pledge that he or she will comply. (Section 8).

The bill amends ss. 475.617 and 475.6175(1), F.S., which provide the pre-licensure and post-licensure education requirements for registered trainee appraisers, respectively, to include rules of the Florida Real Estate Appraisal Board that are equivalent to the Uniform Standards of Professional Appraisal Practice. (Sections 9 and 10).

The bill amends s. 475.6171(4), F.S., to repeal the provision that no certifications as an appraiser shall be issued based upon the results of national examinations that are obtained more than 24 months after the date of the examination. (Section 32).

The bill amends s. 475.6235(1), F.S., to delete the prohibition against the use of the titles “appraisal management company,” “appraiser cooperative,” “appraiser portal,” or “mortgage technology company,” or other terms unless the person is registered with the department as an appraisal management company. This prohibition is added by the bill to the definition of the term “appraisal management company” in s. 475.611(1)(c), F.S. (Section 33).

The bill amends s. 475.6235(4), F.S., which relates to the registration of appraisal management companies, to reference standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of real estate appraisal, instead of referencing the Uniform Standards of Professional Appraisal Practices with which the officers, managers, or owners must pledge they will comply. (Section 19).

The bill also creates s. 475.6235(9), F.S., to exempt a financial institution, as defined in s. 655.005, F.S., from the provisions of this section if the financial institution owns or operates an internal appraiser office, business, unit, or department, or an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal agency. This would conform the provision to the exemption from state regulation provided for bank-owned appraisal management companies as provided by the Dodd Frank Act.¹¹ (Section 33).

The bill amends s. 475.624(14), F.S., which provides the disciplinary provisions for appraisers, to reference standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board. (Section 23).

¹¹ *Supra* at n. 6.

The bill amends s. 475.6245(1), F.S., which provides the disciplinary provisions for appraisal management companies, to reference standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board. (Section 24).

The bill amends s. 475.628, F.S., which specifies the professional standards with which registered, licensed, and certified appraisers are required to comply, to require the Florida Real Estate Appraisal Board to adopt rules that establish standards of professional practice that meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation.¹² It also references the standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board. (Section 28).

Real Estate Schools-Distance Learning

The bill amends s. 475.451, F.S., to permit continuing education instructors to complete their continuing education through either classroom or distance learning. It also provides that real estate schools may offer any continuing education course through distance learning if the course complies with s. 475.17(2), F.S., which authorizes the Florida Real Estate Commission to approve distance learning courses. (Section 35).

Architects

The bill amends s. 481.209, F.S., to allow greater reciprocity of licensees' requirements to make Florida consistent with other states to improve licensing mobility for architects. (Section 12). It also amends ss. 481.211 and 481.213, F.S., to modify the internship requirements to make Florida consistent with other states to improve licensing mobility for architects. (Sections 13 and 14).

Continuing Education for Inactive and Delinquent Licenses

The bill amends s. 455.271(10), F.S., to require only one renewal cycle of continuing education to reactivate a license for the professions regulated by a board of the department, or by the department if there is no board. It reduces the continuing education requirements for renewal of an inactive license to only one renewal cycle of hours, instead of the hours required for each year or two-year period that the license was inactive. The bill exempts certified public accountants licensed under ch. 473, F.S., and real estate brokers, sales associates, real estate schools, and appraisers licensed under ch. 474, F.S. These professionals would have to complete the continuing education required for each two-year period of licensure. (Section 1).

The bill also reduces the continuing education hours required to reactivate an inactive license to only one renewal cycle of hours, instead of the hours required for each year the license was inactive, for the following professions:

- Community association managers in s. 468.4338, F.S. (Section 2);
- Home inspectors in s. 468.8317, F.S. (Section 4);
- Mold-related services in s. 468.8417, F.S. (Section 5);

¹² Established in 1986, the Appraisal Foundation is composed of professional appraisal organizations in the United States and Canada. Its mission is to establish generally accepted standards of professional practice, i.e., the Uniform Standards of Professional Appraisal Practice (USPAP). The Appraisal Standards Board sets forth the rules for developing and reporting its results. It also promotes the use, understanding and enforcement of the USPAP. Information about the Appraisal Foundation is available at: <http://www.appraisalfoundation.org/> (Last visited February 6, 2012).

- Cosmetology in s. 477.0212(2), F.S. (Section 11);
- Architecture and interior design in s. 481.217(1), F.S. (Section 15);
- Landscape architecture in s. 481.315(1), F.S. (Section 16);
- Construction contracting in s. 489.116(6), F.S. (Section 17); and
- Electrical and alarm system contracting in s. 489.519(1), F.S. (Section 18).

The bill also amends s. 481.217(1), F.S., to clarify that the Board of Architecture and Interior Design may only approve continuing education for an interior designer that builds upon the basic knowledge of interior design. (Section 15).

Repeal of Criminal Penalties

The bill amends s. 468.391, F.S., to limit the application of criminal penalties relating to auctioneering. The criminal penalties would not apply to violations of rules of the Florida Board of Auctioneers or violations of part VI of ch. 468, F.S. The bill limits the application of criminal penalties to the violations related to the following paragraphs in s. 468.389(1), F.S. (Section 20):

- (c) Failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another which has come into the control of an auctioneer or auction business through an auction.
- (e) Any conduct in connection with a sales transaction which demonstrates bad faith or dishonesty.
- (f) Using or permitting the use of false bidders, cappers, or shells.
- (h) Commingling money or property of another person with his or her own. Every auctioneer and auction business shall maintain a separate trust or escrow account in an insured bank or savings and loan association located in this state in which shall be deposited all proceeds received for another person through an auction sale.
- (i) Refusal or neglect of any auctioneer or other receiver of public moneys to pay the moneys so received into the State Treasury at the times and under the regulations prescribed by law.

The bill also repeals the following provisions that provide criminal penalties for violations of agency rules and the chapters of the Florida Statutes that govern the specified professions:

- Section 475.42(1)(e), F.S., relating to violations of rules of the Florida Real Estate Commission and violations of ch. 475, F.S. (Section 22);
- Section 476.194(1)(b), F.S., relating to violations of rules of the Barbers' Board, and violations of ch. 476, F.S. (Section 26); and
- Section 477.0265(1)(c), F.S., relating to violations of the Board of Cosmetology and ch. 477, F.S. (Section 27).

Exemptions from Requirements Concerning Mold-Related Services

The bill amends s. 468.841(d), F.S., to exempt persons and businesses licensed as Landscape Architects under Part 2 of ch. 481., F.S., from complying with requirements in Part XVI of ch. 468, F.S., relating to mold assessment if they are not holding themselves out for hire to the public using names that imply that they perform mold assessment services, or stating or implying

that they are licensed under Part XVI. (Section 30). The statute's current exemptions include persons and businesses licensed as architects or interior designers under Part I of ch. 481, F.S.

Repeal of Redundant Penalties

The bill repeals paragraphs (b) and (c) of s. 475.626(1), F.S., which provide violations and penalties for real estate appraisers. These provisions are redundant of other provisions in this section. Section 475.626(1)(b), F.S., which prohibits violating any lawful order or rule of the board which is binding on him or her, is addressed in s. 475.624(4), F.S. Section 475.626(1)(c), F.S., which provides that a trainee appraiser or a licensed or certified appraiser may not commit any conduct set forth in s. 475.624, F.S., is addressed by s. 475.624, F.S., which contains prohibitions that apply to trainee appraisers, and licensed or certified appraisers. (Section 25).

Effective Date

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:

The reduction in the number of continuing education hours required to reactivate an inactive license would reduce costs for the following professionals with inactive licenses: community association managers, home inspectors, providers of mold-related services, cosmetologists, architects, landscape architects, construction contractors, and electrical and alarm system contractors. The bill may reduce the amount paid by the licensees to private continuing education providers.

Authorization of the filing of a lien to secure collections services expenses for condominium associations would result in increased collection of the expenses if liens are satisfied.

Because the bill decriminalizes violations of rules that are currently second degree misdemeanors, it would have an impact on private citizens who may otherwise have been assessed a fine or required to serve a jail sentence.

C. Government Sector Impact:

According to the department, it would see no increase or decrease in revenue. The costs of continuing education courses are paid by the licensees directly to the private sector course provider and not to the department. Therefore, the reduction in the number of continuing education hours required to reactivate an inactive license would not affect the department.

VI. Technical Deficiencies:

Section 16 of the bill amends s. 481.315(1), F.S., concerning reactivation of inactive or delinquent landscape architecture licenses. It provides that the board may not require completion of more than one renewal cycle of continuing education requirements, but does not specify “to reactivate the license” as is stated in all other sections of the bill that make similar changes for other licensing requirements.

On line 588 of the bill, the word “or” is inadvertently deleted.

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 February 9, 2012:

- Waives the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for military veterans who apply to the department for a license within 24 months of being honorably discharged from service.
- Authorizes filing of a lien for collection services expenses that are reasonably related to the collection of a delinquent account rendered by a community association manager or management firm on behalf of a community association.
- Clarifies the confidentiality of certain financial documents for employee leasing companies.
- Conforms with exemptions for other utilities by removing a requirement for persons repairing, maintaining, removing, or disposing of asbestos-containing pipe or conduit used for gas service to be licensed as an asbestos consultant or contractor.
- Allows greater reciprocity of architect licensees and modifies the internship requirements to make Florida consistent with other states to improve licensing mobility for architects.
- Expands exemptions regarding mold-related services to include landscape architects.

- Revises provisions related to the regulation of appraisal management companies, banks, credit unions, or other lending institutions that own and operate an internal appraisal office, business unit, or department.
- Permits applicants for a real estate appraiser's certification to use the results of national examinations required for the license that were obtained more than 24 months after the date of the examination.
- Permits real estate continuing education instructors to complete their continuing education through distance learning and permits real estate schools to offer any course through distance learning.

B. Amendments:

None.



516614

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2012	.	
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The Committee on Criminal Justice (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (10) of section 455.271, Florida
Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(10) The board, or the department when there is no board,
may not require ~~Before reactivation,~~ an inactive or delinquent
licensee, except for a licensee under chapter 473 or chapter
475, to complete more than one renewal cycle of ~~shall meet the~~
~~same~~ continuing education to reactivate a license. ~~requirements,~~



516614

~~if any, imposed on an active status licensee for all biennial
licensure periods in which the licensee was inactive or
delinquent. This subsection does not apply to persons regulated
under chapter 473.~~

Section 2. Section 468.4338, Florida Statutes, is amended
to read:

468.4338 Reactivation; continuing education.—The council
shall prescribe by rule continuing education requirements for
reactivating a license. The continuing education requirements
for reactivating a license may not exceed more than one renewal
cycle of continuing education ~~10 classroom hours for each year
the license was inactive.~~

Section 3. Paragraph (h) is added to subsection (3) of
section 468.525, Florida Statutes, to read:

468.525 License requirements.—

(3) Each employee leasing company licensed by the
department shall have a registered agent for service of process
in this state and at least one licensed controlling person. In
addition, each licensed employee leasing company shall comply
with the following requirements:

(h) Following initial licensure, each employee leasing
company and each employee leasing company group shall be
considered an applicant for renewal of its license and all of
the financial information of such licensees submitted to the
board pursuant to part XI of chapter 468 and the rules enacted
thereunder shall be considered supplied in furtherance of the
renewal application process.

Section 4. Subsection (2) of section 468.8317, Florida
Statutes, is amended to read:



516614

42 468.8317 Inactive license.—

43 (2) A license that becomes ~~has become~~ inactive may be
44 reactivated upon application to the department. The department
45 may prescribe by rule continuing education requirements as a
46 condition of reactivating a license. The rules may not require
47 more than one renewal cycle of continuing education to
48 reactivate ~~requirements for reactivating~~ a license ~~may not~~
49 ~~exceed 14 hours for each year the license was inactive.~~

50 Section 5. Subsection (2) of section 468.8417, Florida
51 Statutes, is amended to read:

52 468.8417 Inactive license.—

53 (2) A license that becomes ~~has become~~ inactive may be
54 reactivated upon application to the department. The department
55 may prescribe by rule continuing education requirements as a
56 condition of reactivating a license. The rules may not require
57 more than one renewal cycle of continuing education to
58 reactivate ~~requirements for reactivating~~ a license ~~may not~~
59 ~~exceed 14 hours for each year the license was inactive.~~

60 Section 6. Section 468.439, Florida Statutes, is created to
61 read:

62 468.439 Collection services.—Collection service expenses
63 that are reasonably related to the collection of a delinquent
64 account rendered by a community association manager or
65 management firm on behalf of a community association governed by
66 chapter 617, chapter 718, chapter 719, chapter 720, chapter 721,
67 or chapter 723 may be secured by the filing of a claim of lien
68 on behalf of the community association, if the collection
69 services expense is specified by amount in a written agreement
70 with the community association manager or management firm and



516614

71 payable to the community association manager or management firm
72 as a liquidated sum.

73 Section 7. Subsection (4) of section 469.002, Florida
74 Statutes, is amended to read:

75 469.002 Exemptions.—

76 (4) Licensure as an asbestos consultant or contractor is
77 not required for the repair, maintenance, removal, or disposal
78 of asbestos-containing pipe or conduit, if:

79 (a) The pipe or conduit is used for electrical, electronic,
80 communications, sewer, gas, or water service;

81 (b) The pipe or conduit is not located in a building;

82 (c) The pipe or conduit is made of Category I or Category
83 II nonfriable material as defined in NESHAP; and

84 (d) All such activities are performed according to all
85 applicable regulations, including work practices and training,
86 of the United States Occupational Safety and Health
87 Administration under 29 C.F.R. part 1926.

88 Section 8. Subsection (5) of section 475.615, Florida
89 Statutes, is amended to read:

90 475.615 Qualifications for registration or certification.—

91 (5) At the time of filing an application for registration
92 or certification, the applicant must sign a pledge indicating
93 that upon becoming registered or certified, she or he will
94 comply with the standards of professional practice established
95 by rule of the board, including standards for the development or
96 communication of a real estate appraisal, ~~to comply with the~~
97 ~~Uniform Standards of Professional Appraisal Practice upon~~
98 ~~registration or certification~~ and must indicate in writing that
99 she or he understands the types of misconduct for which



516614

disciplinary proceedings may be initiated. The application shall expire 1 year after the date received by the department.

Section 9. Subsection (1), paragraph (b) of subsection (2), and paragraph (b) of subsection (3) of section 475.617, Florida Statutes, are amended to read:

475.617 Education and experience requirements.—

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 hours of approved academic courses in subjects related to real estate appraisal, which shall include coverage of the Uniform Standards of Professional Appraisal Practice, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 125 hours. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved on an hour-for-hour basis.

(2) To be certified as a residential appraiser, an applicant must present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe by rule education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation:



516614

(b) Has successfully completed at least 200 classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which shall include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(3) To be certified as a general appraiser, an applicant must present evidence satisfactory to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation:

(b) Has successfully completed at least 300 classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which shall include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a



516614

158 permit pursuant to s. 475.451. A classroom hour is defined as 50
159 minutes out of each 60-minute segment. Past courses may be
160 approved by the board and substituted on an hour-for-hour basis.

161 Section 10. Subsection (1) of section 475.6175, Florida
162 Statutes, is amended to read:

163 475.6175 Registered trainee appraiser; postlicensure
164 education required.—

165 (1) The board shall prescribe postlicensure educational
166 requirements in order for a person to maintain a valid
167 registration as a registered trainee appraiser. If prescribed,
168 the postlicensure educational requirements consist of one or
169 more courses which total no more than the total educational
170 hours required to qualify as a state certified residential
171 appraiser. Such courses must be in subjects related to real
172 estate appraisal and shall include coverage of the Uniform
173 Standards of Professional Appraisal Practice or its equivalent,
174 as established by rule of the board. Such courses are provided
175 by a nationally or state-recognized appraisal organization,
176 career center, accredited community college, college, or
177 university, state or federal agency or commission, or
178 proprietary real estate school that holds a permit pursuant to
179 s. 475.451.

180 Section 11. Subsection (2) of section 477.0212, Florida
181 Statutes, is amended to read:

182 477.0212 Inactive status.—

183 (2) The board shall adopt ~~promulgate~~ rules relating to
184 licenses that ~~which have~~ become inactive and for the renewal of
185 inactive licenses. The rules may not require more than one
186 renewal cycle of continuing education to reactivate a license.



516614

The board shall prescribe by rule a fee not to exceed \$50 for the reactivation of an inactive license and a fee not to exceed \$50 for the renewal of an inactive license.

Section 12. Subsection (1) of section 481.209, Florida Statutes, is amended to read:

481.209 Examinations.—

(1) A person desiring to be licensed as a registered architect by initial examination shall apply to the department, ~~complete to take the licensure examination. The department shall administer the licensure examination for architects to each applicant who the board certifies:~~

~~(a) Has completed the application form, and remit remitted~~ a nonrefundable application fee. The department shall license any applicant who the board certifies: and an examination fee ~~which is refundable if the applicant is found to be ineligible to take the examination;~~

(a) Has passed the licensure examination prescribed by board rule; and

~~(b)1. Is a graduate of a school or college of architecture with a program accredited by the National Architectural Accreditation Board.; or~~

~~2. Is a graduate of an approved architectural curriculum, evidenced by a degree from an unaccredited school or college of architecture approved by the board. The board shall adopt rules providing for the review and approval of unaccredited schools and colleges of architecture and courses of architectural study based on a review and inspection by the board of the curriculum of accredited schools and colleges of architecture in the United States; and~~



516614

~~(c) Has completed, prior to examination, 1 year of the
internship experience required by s. 481.211(1).~~

Section 13. Section 481.211, Florida Statutes, is amended
to read:

481.211 Architecture internship required.—

~~(1) An applicant for licensure as a registered architect
shall complete, prior to licensure, an internship of diversified
architectural experience approved by the board, meeting
requirements set forth by rule. in the design and construction
of structures which have as their principal purpose human
habitation or use. The internship shall be for a period of:~~

~~(a) Three years for an applicant holding the degree of
Bachelor of Architecture; or~~

~~(b) Two years for an applicant holding the professional
degree of Master of Architecture.~~

~~(2) Each applicant for licensure shall complete 1 year of
the internship experience required by this section subsequent to
graduation from a school or college of architecture as defined
in s. 481.209(1).~~

Section 14. Paragraph (c) of subsection (3) of section
481.213, Florida Statutes, is amended, and paragraph (d) is
added to that subsection, to read:

481.213 Licensure.—

(3) The board shall certify as qualified for a license by
endorsement as an architect or as an interior designer an
applicant who:

(c) Has passed the prescribed licensure examination and
holds a valid certificate issued by the National Council of
Architectural Registration Boards, and holds a valid license to



516614

practice architecture issued by another state or jurisdiction of the United States. ~~For the purposes of this paragraph, any applicant licensed in another state or jurisdiction after June 30, 1984, must also hold a degree in architecture and such degree must be equivalent to that required in s. 481.209(1)(b). Also for the purposes of this paragraph, any applicant licensed in another state or jurisdiction after June 30, 1985, must have completed an internship equivalent to that required by s. 481.211 and any rules adopted with respect thereto.~~

(d) Has passed the Architect Registration Examination and has held a current active architecture license in good standing for at least 10 years in another state.

Section 15. Subsection (1) of section 481.217, Florida Statutes, is amended to read:

481.217 Inactive status.—

(1) The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The rules may not require more than one renewal cycle of continuing education to reactivate requirements for reactivating a license for a registered architect or interior designer ~~may not exceed 12 contact hours for each year the license was inactive. The minimum continuing education requirement for reactivating a license for a registered interior designer shall be those of the most recent biennium plus one-half of the requirements in s. 481.215 for each year or part thereof during which the license was inactive.~~ The board ~~may~~ shall only approve continuing education for an interior designer which ~~that~~ builds upon the basic knowledge of interior design.

Section 16. Subsection (1) of section 481.315, Florida



516614

Statutes, is amended to read:

481.315 Inactive status.—

(1) A license that has become inactive or delinquent may be reactivated under this section upon application to the department and payment of any applicable biennial renewal or delinquency fee, or both, and a reactivation fee. The board may not require a licensee to complete more than one renewal cycle of continuing education requirements. ~~The board may prescribe by rule continuing education requirements as a condition of reactivating the license. The continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the license was inactive.~~

Section 17. Subsections (3) and (6) of section 489.116, Florida Statutes, are amended to read:

489.116 Inactive and delinquent status; renewal and cancellation notices.—

(3) An inactive status certificateholder or registrant may change to active status at any time, if provided ~~if provided~~ the certificateholder or registrant meets all requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active status certificateholder or registrant, ~~and~~ pays any applicable late fees, and meets all continuing education requirements prescribed by the board.

(6) The board may not require an inactive certificateholder or registrant to complete more than one renewal cycle of ~~shall comply with the same continuing education for reactivating a certificate or registration requirements, if any, that are imposed on an active status certificateholder or registrant.~~

Section 18. Subsection (1) of section 489.519, Florida



516614

Statutes, is amended to read:

489.519 Inactive status.—

(1) A certificate or registration that becomes ~~has become~~ inactive may be reactivated under s. 489.517 upon application to the department. The board may not require a licensee to complete more than one renewal cycle of ~~prescribe, by rule,~~ continuing education to reactivate ~~requirements as a condition of reactivating~~ a certificate or registration. ~~The continuing education requirements for reactivating a certificate or registration may not exceed 12 classroom hours for each year the certificate or registration was inactive.~~

Section 19. Subsection (4) of section 475.6235, Florida Statutes, is amended to read:

475.6235 Registration of appraisal management companies required.—

(4) At the time of filing an application for registration of an appraisal management company, each person listed in paragraph (2)(f) must sign a pledge to comply with the applicable standards of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal, ~~Uniform Standards of Professional Appraisal Practice upon registration~~ and must indicate in writing that she or he understands the types of misconduct for which disciplinary proceedings may be initiated. The application shall expire 1 year after the date received by the department.

Section 20. Section 468.391, Florida Statutes, is amended to read:

468.391 Penalty.—Any auctioneer, apprentice, or auction



516614

business or any owner or manager thereof, or, in the case of corporate ownership, any substantial stockholder of the corporation owning the auction business, who operates without an active license or violates any of the provisions ~~provision~~ of the prohibited acts listed under s. 468.389(1)(c), (e), (f), (h), and (i) commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 21. Paragraph (t) of subsection (1) of section 475.25, Florida Statutes, is amended to read:

475.25 Discipline.—

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed \$5,000 for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

(t) Has violated any standard of professional practice established by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of a real estate appraisal ~~or other provision of the Uniform Standards of Professional Appraisal Practice, as defined in s. 475.611~~, as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, as defined in s. 475.611. This paragraph does not apply to a real estate broker or sales associate who, in the ordinary course of business, performs a comparative market analysis, gives a broker price opinion, or



516614

gives an opinion of value of real estate. However, in no event may this comparative market analysis, broker price opinion, or opinion of value of real estate be referred to as an appraisal, as defined in s. 475.611.

Section 22. Paragraphs (f) through (o) of subsection (1) of section 475.42, Florida Statutes, are redesignated as paragraphs (e) through (n), respectively, and present paragraph (e) of that subsection is amended to read:

475.42 Violations and penalties.—

(1) VIOLATIONS.—

~~(e) A person may not violate any lawful order or rule of the commission which is binding upon her or him.~~

Section 23. Subsection (14) of section 475.624, Florida Statutes, is amended to read:

475.624 Discipline of appraisers.—

The board may deny an application for registration or certification of an appraiser; may investigate the actions of any appraiser registered, licensed, or certified under this part; may reprimand or impose an administrative fine not to exceed \$5,000 for each count or separate offense against any such appraiser; and may revoke or suspend, for a period not to exceed 10 years, the registration, license, or certification of any such appraiser, or place any such appraiser on probation, if the board finds that the registered trainee, licensee, or certificateholder:

(14) Has violated any standard of professional practice, including standards for the development or communication of a real estate appraisal, as established by rule of the board or ~~other provision of the Uniform Standards of Professional~~



516614

~~Appraisal Practice.~~

Section 24. Paragraph (n) of subsection (1) of section 475.6245, Florida Statutes, is amended to read:

475.6245 Discipline of appraisal management companies.—

(1) The board may deny an application for registration of an appraisal management company; may investigate the actions of any appraisal management company registered under this part; may reprimand or impose an administrative fine not to exceed \$5,000 for each count or separate offense against any such appraisal management company; and may revoke or suspend, for a period not to exceed 10 years, the registration of any such appraisal management company, or place any such appraisal management company on probation, if the board finds that the appraisal management company or any person listed in s. 475.6235(2)(f):

(n) Has instructed an appraiser to violate any standard of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice.

Section 25. Paragraphs (d) through (h) of subsection (1) of section 475.626, Florida Statutes, are redesignated as paragraphs (b) through (f), respectively, and present paragraphs (b) and (c) of that subsection are amended to read:

475.626 Violations and penalties.—

(1) A person may not:

~~(b) Violate any lawful order or rule of the board which is binding upon her or him.~~

~~(c) If a registered trainee appraiser or a licensed or certified appraiser, commit any conduct or practice set forth in~~



516614

~~s. 475.624.~~

Section 26. Paragraphs (c) through (f) of subsection (1) of section 476.194, Florida Statutes, are redesignated as paragraphs (b) through (e), respectively, and present paragraph (b) of that subsection is amended to read:

476.194 Prohibited acts.—

(1) It is unlawful for any person to:

~~(b) Engage in willful or repeated violations of this act or of any of the rules adopted by the board.~~

Section 27. Paragraphs (d) through (h) of subsection (1) of section 477.0265, Florida Statutes, are redesignated as paragraphs (c) through (g), respectively, and present paragraph (c) of that subsection is amended to read:

477.0265 Prohibited acts.—

(1) It is unlawful for any person to:

~~(c) Engage in willful or repeated violations of this chapter or of any rule adopted by the board.~~

Section 28. Section 475.628, Florida Statutes, is amended to read:

475.628 Professional standards for appraisers registered, licensed, or certified under this part.—The board shall adopt rules establishing standards of professional practice which meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation. Each appraiser registered, licensed, or certified under this part must ~~shall~~ comply with the rules ~~Uniform Standards of Professional Appraisal Practice~~. Statements on appraisal standards which may be issued for the purpose of clarification, interpretation, explanation, or elaboration



516614

through the Appraisal Foundation shall also be binding on any appraiser registered, licensed, or certified under this part, upon adoption by rule of the board.

Section 29. Paragraph (c) of subsection (5) of section 373.461, Florida Statutes, is amended to read:

373.461 Lake Apopka improvement and management.—

(5) PURCHASE OF AGRICULTURAL LANDS.—

(c) The district shall explore the availability of funding from all sources, including any federal, state, regional, and local land acquisition funding programs, to purchase the agricultural lands described in paragraph (a). It is the Legislature's intent that, if such funding sources can be identified, acquisition of the lands described in paragraph (a) may be undertaken by the district to purchase these properties from willing sellers. However, the purchase price paid for acquisition of such lands that were in active cultivation during 1996 may ~~shall~~ not exceed the highest appraisal obtained by the district for these lands from a state-certified general appraiser following the standards of professional practice established by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of a real estate appraisal ~~Uniform Standards of Professional Appraisal Practice~~. This maximum purchase price limitation may ~~shall~~ not include, nor be applicable to, that portion of the purchase price attributable to consideration of income described in paragraph (b), or that portion attributable to related facilities, or closing costs.

Section 30. Paragraph (d) of subsection (1) of section 468.841, Florida Statutes, is amended to read:



516614

468.841 Exemptions.—

(1) The following persons are not required to comply with any provisions of this part relating to mold assessment:

(d) Persons or business organizations acting within the scope of the respective licenses required under part XV of this chapter, chapter 471, part I or part II of chapter 481, chapter 482, or chapter 489 are acting on behalf of an insurer under part VI of chapter 626, or are persons in the manufactured housing industry who are licensed under chapter 320, except when any such persons or business organizations hold themselves out for hire to the public as a "certified mold assessor," "registered mold assessor," "licensed mold assessor," "mold assessor," "professional mold assessor," or any combination thereof stating or implying licensure under this part.

Section 31. Paragraphs (c) and (d) of subsection (1) of section 475.611, Florida Statutes, are amended, paragraphs (t) through (x) are redesignated as paragraphs (u) through (y), respectively, and a new paragraph (t) is added to that subsection, to read:

475.611 Definitions.—

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

(c) "Appraisal management company" means a person who performs appraisal management services regardless of the use of the term "appraisal management company," "appraiser cooperative," "appraiser portal," "mortgage technology company," or other term.

(d) "Appraisal management services" means the coordination or management of appraisal services for compensation by:

1. Employing, contracting with, or otherwise retaining one



516614

or more licensed or certified appraisers to perform appraisal services for a client; or

2. Acting as a broker or intermediary between a client and one or more licensed or certified appraisers to facilitate the client's employing, contracting with, or otherwise retaining the appraisers.

(t) "Subsidiary" means an organization that is owned and controlled by a financial institution that is regulated by a federal financial institution regulatory agency.

Section 32. Subsection (4) of section 475.6171, Florida Statutes, is amended to read:

475.6171 Issuance of registration or certification.—The registration or certification of an applicant may be issued upon receipt by the board of the following:

(4) If required, proof of passing a written examination as specified in s. 475.616. ~~No certification shall be issued based upon any examination results obtained more than 24 months after the date of examination.~~

Section 33. Subsection (1) of section 475.6235, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

475.6235 Registration of appraisal management companies required; exemptions.—

(1) A person may not engage, or offer to engage, in appraisal management services for compensation in this state, advertise or represent herself or himself as an appraisal management company, ~~or use the titles "appraisal management company," "appraiser cooperative," "appraiser portal," or "mortgage technology company," or any abbreviation or words to~~



516614

~~that effect,~~ unless the person is registered with the department as an appraisal management company under this section. However, an employee of an appraisal management company is not required to obtain a separate registration.

(9) This section does not apply to:

(a) A financial institution, as defined in s. 655.005, which owns and operates an internal appraisal office, business unit, or department; or

(b) An appraisal management company that is a subsidiary owned and controlled by a financial institution, as defined in s. 655.005, which is regulated by a federal financial institution regulatory agency.

Section 34. Subsection (12) is added to section 455.213, Florida Statutes, to read:

455.213 General licensing provisions.—

(12) The department shall waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran who applies to the department for a license, in a format prescribed by the department, within 24 months after discharge from any branch of the United States Armed Forces. To qualify for this waiver, the veteran must have been honorably discharged.

Section 35. Paragraph (c) of subsection (2) of section 475.451, Florida Statutes, is amended, present subsections (4) through (8) are renumbered as subsections (5) through (9), respectively, and a new subsection (4) is added to that section, to read:

475.451 Schools teaching real estate practice.—

(2) An applicant for a permit to operate a proprietary real



516614

estate school, to be a chief administrator of a proprietary real estate school or a state institution, or to be an instructor for a proprietary real estate school or a state institution must meet the qualifications for practice set forth in s. 475.17(1) and the following minimal requirements:

(c) "School instructor" means an individual who instructs persons in the classroom in noncredit college courses in a college, university, or community college or courses in a career center or proprietary real estate school.

1. Before commencing to provide such instruction, the applicant must certify the applicant's competency and obtain an instructor permit by meeting one of the following requirements:

a. Hold a bachelor's degree in a business-related subject, such as real estate, finance, accounting, business administration, or its equivalent and hold a valid broker's license in this state.

b. Hold a bachelor's degree, have extensive real estate experience, as defined by rule, and hold a valid broker's license in this state.

c. Pass an instructor's examination approved by the commission.

2. Any requirement by the commission for a teaching demonstration or practical examination must apply to all school instructor applicants.

3. The department shall renew an instructor permit upon receipt of a renewal application and fee. The renewal application shall include proof that the permitholder has, since the issuance or renewal of the current permit, successfully completed a minimum of 7 classroom or distance learning hours of



516614

instruction in real estate subjects or instructional techniques,
as prescribed by the commission. The commission shall adopt
rules providing for the renewal of instructor permits at least
every 2 years. Any permit that ~~which~~ is not renewed at the end
of the permit period established by the department ~~shall~~
automatically reverts ~~revert~~ to involuntarily inactive status.

The department may require an applicant to submit names of
persons having knowledge concerning the applicant and the
enterprise; may propound interrogatories to such persons and to
the applicant concerning the character of the applicant,
including the taking of fingerprints for processing through the
Federal Bureau of Investigation; and shall make such
investigation of the applicant or the school or institution as
it may deem necessary to the granting of the permit. If an
objection is filed, it shall be considered in the same manner as
objections or administrative complaints against other applicants
for licensure by the department.

(4) A real estate school may offer any course through
distance learning if the course complies with s. 475.17(2).

Section 36. This act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to reducing and streamlining
regulations; amending ss. 455.271, 468.4338, 468.525,



516614

468.8317, 468.8417, 475.615, 475.617, 475.6175,
477.0212, 481.209, 481.211, 481.213, 481.217, 481.315,
489.116, and 489.519, F.S.; revising certain licensure
requirements and continuing education requirements for
reactivating a license, certificate, or registration
to practice certain professions and occupations
regulated by the Department of Business and
Professional Regulation or a board or council within
the department, including community association
management, employee leasing, home inspection, mold-
related services, real estate appraisal, cosmetology,
architecture and interior design, landscape
architecture, construction contracting, and electrical
and alarm system contracting; creating s. 468.439,
F.S.; providing conditions that collection service
expenses that are reasonably related to the collection
of a delinquent account rendered by a community
association manager or management firm on behalf of
certain community associations may be secured by the
filing of a claim of lien; amending s. 469.002, F.S.;
providing an exemption from licensure as an asbestos
consultant or contractor for activities involving pipe
or conduit used for gas service; amending s. 475.6235,
F.S.; revising registration requirements for appraisal
management companies; amending ss. 468.391, 475.25,
475.42, 475.624, 475.6245, 475.626, 476.194, and
477.0265, F.S., relating to auctioneering, real estate
brokering and appraisal, barbering, and cosmetology;
revising language with respect to certain penalties;



516614

revising grounds for discipline to which penalties apply; amending s. 475.628, F.S.; requiring the Florida Real Estate Appraisal Board to adopt rules establishing professional practice standards; amending s. 373.461, F.S.; requiring certain appraisers to follow specific standards of professional practice in appraisals involving the restoration of the Lake Apopka Basin; amending s. 468.841, F.S.; exempting landscape architects from complying with provisions related to mold assessment; amending s. 475.611, F.S.; revising the definition of the terms "appraisal management company" and "appraisal management services"; amending s. 475.6171, F.S.; revising requirements for the issuance of registration or certification upon receipt of proper documentation; amending s. 475.6235, F.S.; revising provisions relating to titles an appraisal management company must be registered to use; providing exemptions from registration requirements; amending s. 455.213, F.S.; waiving initial licensing, application, and unlicensed activity fees for certain military veterans; amending s. 475.451, F.S.; authorizing distance learning courses as an acceptable alternative to classroom instruction for renewal of a real estate instructor permit; providing that distance learning courses are under the discretion of the school offering the real estate course; requiring distance learning courses to adhere to certain requirements; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2012	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (516614) (with directory amendment)

Delete lines 254 - 256.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete lines 236 - 237

and insert:

481.213, Florida Statutes, is amended to read:

By Senator Hays

20-00549-12

2012762__

1 A bill to be entitled
 2 An act relating to the practice of professions
 3 regulated by the Department of Business and
 4 Professional Regulation; amending s. 373.461, F.S.;
 5 providing for the use of the standards of professional
 6 practice established by the Real Estate Appraisal
 7 Board in connection with the purchase of land to
 8 restore Lake Apopka; amending s. 455.271, F.S.;
 9 reducing the maximum amount of continuing education
 10 that may be required by the Department of Business and
 11 Professional Regulation or one of its boards to
 12 reactivate certain inactive licenses; amending s.
 13 468.391, F.S.; exempting certain types of misconduct
 14 relating to auction businesses from being penalized as
 15 a felony; amending s. 468.4338, F.S.; reducing the
 16 maximum amount of continuing education that may be
 17 required by the Regulatory Council of Community
 18 Association Managers to reactivate an inactive
 19 license; amending s. 468.8317, F.S.; reducing the
 20 maximum amount of continuing education that may be
 21 required by the Department of Business and
 22 Professional Regulation for an inactive home
 23 inspection services license; amending s. 468.8417,
 24 F.S.; reducing the maximum amount of continuing
 25 education that may be required by Department of
 26 Business and Professional Regulation to reactivate an
 27 inactive mold-related services license; amending s.
 28 475.25, F.S.; subjecting a person to discipline for a
 29 violation of rule of the Real Estate Appraisal Board;

Page 1 of 18

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

20-00549-12

2012762__

30 amending s. 475.42, F.S.; deleting a provision
 31 prohibiting a person from violating a lawful order or
 32 rule of the Real Estate Commission; amending s.
 33 475.615, F.S.; requiring an applicant for registration
 34 or certification as a real estate appraiser to pledge
 35 to comply with the standards of professional practice
 36 established by the Real Estate Appraisal Board;
 37 amending s. 475.617, F.S.; authorizing the Real Estate
 38 Appraisal Board to approve courses covering subjects
 39 equivalent to the Uniform Standards of Professional
 40 Appraisal Practice to satisfy the academic course
 41 requirements for registration as a trainee appraiser,
 42 residential appraiser, or general appraiser; amending
 43 s. 475.6175, F.S.; authorizing the Real Estate
 44 Appraisal Board to approve courses covering subjects
 45 equivalent to the Uniform Standards of Professional
 46 Appraisal Practice to satisfy the postlicensure
 47 educational requirements for trainee appraisers;
 48 amending s. 475.6235, F.S.; requiring an applicant for
 49 registration of an appraisal management company to
 50 pledge to comply with the standards of professional
 51 practice established by the Real Estate Appraisal
 52 Board; amending s. 475.624, F.S.; authorizing the Real
 53 Estate Appraisal Board to discipline certain
 54 appraisers who violate a standard of professional
 55 practice established by board rule; amending s.
 56 475.6245, F.S.; authorizing the Real Estate Appraisal
 57 Board to discipline an appraisal management company
 58 that violates a standard of professional practice

Page 2 of 18

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20-00549-12

2012762__

59 adopted by board rule; amending s. 475.626, F.S.;
 60 deleting provisions subjecting a person to criminal
 61 penalties for engaging in certain types of misconduct
 62 relating to real estate appraisals; amending s.
 63 475.628, F.S.; authorizing the Real Estate Appraisal
 64 Board to adopt rules of standards of professional
 65 practice established by the Appraisal Standards Board
 66 of the Appraisal Foundation; amending s. 476.194,
 67 F.S.; deleting a provision subjecting a person to
 68 criminal penalties for engaging in willful or repeated
 69 violations of laws or rules regulating the practice of
 70 barbering; amending s. 477.0212, F.S.; reducing the
 71 maximum amount of continuing education that may be
 72 required by the Board of Cosmetology to reactivate an
 73 inactive cosmetologist's license; amending s.
 74 477.0265, F.S.; deleting a provision subjecting a
 75 person to criminal penalties for engaging in willful
 76 or repeated violations of laws or rules regulating
 77 cosmetology; amending s. 481.217, F.S.; reducing the
 78 maximum amount of continuing education that may be
 79 required by the Board of Architecture and Interior
 80 Design to reactivate an inactive registered architect
 81 or an interior designer license; amending s. 481.315,
 82 F.S.; reducing the maximum amount of continuing
 83 education that may be required by the Board of
 84 Landscape Architecture to reactivate certain inactive
 85 licenses; amending s. 489.116, F.S.; requiring a
 86 person to meet certain continuing education
 87 requirements as a prerequisite to reactivate an

Page 3 of 18

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20-00549-12

2012762__

88 inactive certificate or registration with the
 89 Construction Industry Licensing Board; reducing the
 90 maximum amount of continuing education that may be
 91 required by the Construction Industry Licensing Board
 92 to reactivate certain inactive certificates or
 93 registrations; amending s. 489.519, F.S.; reducing the
 94 maximum amount of continuing education that may be
 95 required by the Electrical Contractors' Licensing
 96 Board to reactivate certain inactive certificates or
 97 registrations; providing an effective date.
 98
 99 Be It Enacted by the Legislature of the State of Florida:
 100
 101 Section 1. Paragraph (c) of subsection (5) of section
 102 373.461, Florida Statutes, is amended to read:
 103 373.461 Lake Apopka improvement and management.—
 104 (5) PURCHASE OF AGRICULTURAL LANDS.—
 105 (c) The district shall explore the availability of funding
 106 from all sources, including any federal, state, regional, and
 107 local land acquisition funding programs, to purchase the
 108 agricultural lands described in paragraph (a). The Legislature
 109 intends ~~It is the Legislature's intent~~ that, if such funding
 110 sources can be identified, acquisition of the lands described in
 111 paragraph (a) may be undertaken by the district to purchase
 112 these properties from willing sellers. However, the purchase
 113 price paid for acquisition of such lands that were in active
 114 cultivation during 1996 may ~~shall~~ not exceed the highest
 115 appraisal obtained by the district for these lands from a state-
 116 certified general appraiser following the standards of

Page 4 of 18

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20-00549-12

2012762

professional practice adopted by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of a real estate appraisal ~~Uniform Standards of Professional Appraisal Practice~~. This maximum purchase price limitation ~~does shall~~ not include, ~~or apply nor be applicable~~ to, that portion of the purchase price attributable to consideration of income described in paragraph (b), or that portion attributable to related facilities, or closing costs.

Section 2. Subsection (10) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(10) The board, or the department if there is no board, may not require Before reactivation, an inactive or delinquent licensee, except for a licensee under chapter 473 or chapter 475, to complete more than one renewal cycle of shall meet the same continuing education in order to reactivate a license. requirements, if any, imposed on an active status licensee for all biennial licensure periods in which the licensee was inactive or delinquent. This subsection does not apply to persons regulated under chapter 473.

Section 3. Section 468.391, Florida Statutes, is amended to read:

468.391 Penalty.—Any auctioneer, apprentice, or auction business or any owner or manager thereof, or, in the case of corporate ownership, any substantial stockholder of the corporation owning the auction business, who operates without an active license or engages in an act that is grounds for disciplinary action ~~violates any provision of the prohibited acts listed under s. 468.389(1)(c), (e), (f), (h), or (i)~~

20-00549-12

2012762

commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 4. Section 468.4338, Florida Statutes, is amended to read:

468.4338 Reactivation; continuing education.—The council shall prescribe by rule continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license may not exceed more than one renewal cycle of continuing education ~~exceed 10 classroom hours for each year the license was inactive.~~

Section 5. Subsection (2) of section 468.8317, Florida Statutes, is amended to read:

468.8317 Inactive license.—

(2) A license that becomes ~~has become~~ inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements for as a condition of reactivating a license. The rules may not require more than one renewal cycle of continuing education in order to reactivate requirements for reactivating a license may not ~~exceed 14 hours for each year the license was inactive.~~

Section 6. Subsection (2) of section 468.8417, Florida Statutes, is amended to read:

468.8417 Inactive license.—

(2) A license that becomes ~~has become~~ inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition of reactivating a license. The rules may not require more than one renewal cycle of continuing education in order to reactivate requirements for reactivating a license may not

20-00549-12 2012762

~~exceed 14 hours for each year the license was inactive.~~

Section 7. Paragraph (t) of subsection (1) of section 475.25, Florida Statutes, is amended to read:

475.25 Discipline.—

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed \$5,000 for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

(t) Has violated any standard of professional practice adopted by rule of the Real Estate Appraisal Board, including standards for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice, as defined in s. 475.611, as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, as defined in s. 475.611. This paragraph does not apply to a real estate broker or sales associate who, in the ordinary course of business, performs a comparative market analysis, gives a broker price opinion, or gives an opinion of value of real estate. However, ~~in no event may~~ this comparative market analysis, broker price opinion, or opinion of value of real estate may not be referred to as an appraisal, as defined in s. 475.611.

Section 8. Paragraph (e) of subsection (1) of section 475.42, Florida Statutes, is amended, and present paragraphs (f)

20-00549-12 2012762

through (o) of that subsection are redesignated as paragraphs (e) through (n), respectively, to read:

475.42 Violations and penalties.—

(1) VIOLATIONS.—

~~(e) A person may not violate any lawful order or rule of the commission which is binding upon her or him.~~

Section 9. Subsection (5) of section 475.615, Florida Statutes, is amended to read:

475.615 Qualifications for registration or certification.—

(5) At the time of filing an application for registration or certification, the applicant must sign a pledge indicating that upon becoming registered or certified, the person will comply with the standards of professional practice adopted by board rule, including standards for the development or communication of a real estate appraisal. The applicant ~~to~~ comply with the Uniform Standards of Professional Appraisal Practice upon registration or certification and must also indicate in writing that she or he understands the types of misconduct for which disciplinary proceedings may be initiated. The application expires ~~shall expire~~ 1 year after the date it is received by the department.

Section 10. Subsections (1), (2), and (3) of section 475.617, Florida Statutes, are amended to read:

475.617 Education and experience requirements.—

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 hours of approved academic courses in subjects related to real estate appraisal, which shall include coverage of the Uniform Standards of

20-00549-12 2012762

233 Professional Appraisal Practice, or its equivalent, adopted by
 234 board rule, from a nationally recognized or state-recognized
 235 appraisal organization, career center, accredited community
 236 college, college, or university, state or federal agency or
 237 commission, or proprietary real estate school that holds a
 238 permit pursuant to s. 475.451. The board may increase the
 239 required number of hours to not more than 125 hours. A classroom
 240 hour is defined as 50 minutes out of each 60-minute segment.
 241 Past courses may be approved on an hour-for-hour basis.

242 (2) To be certified as a residential appraiser, an
 243 applicant must present satisfactory evidence to the board that
 244 she or he has met the minimum education and experience
 245 requirements prescribed by rule of the board. The board shall
 246 prescribe by rule education and experience requirements that
 247 meet or exceed the following real property appraiser
 248 qualification criteria adopted on February 20, 2004, by the
 249 Appraisal Qualifications Board of the Appraisal Foundation:

250 (a) Has at least 2,500 hours of experience obtained over a
 251 24-month period in real property appraisal as defined by rule.

252 (b) Has successfully completed at least 200 classroom
 253 hours, inclusive of examination, of approved academic courses in
 254 subjects related to real estate appraisal, which must ~~shall~~
 255 include a 15-hour National Uniform Standards of Professional
 256 Appraisal Practice course, or its equivalent, adopted by board
 257 rule, from a nationally recognized or state-recognized appraisal
 258 organization, career center, accredited community college,
 259 college, or university, state or federal agency or commission,
 260 or proprietary real estate school that holds a permit pursuant
 261 to s. 475.451. A classroom hour is defined as 50 minutes out of

20-00549-12 2012762

262 each 60-minute segment. Past courses may be approved by the
 263 board and substituted on an hour-for-hour basis.

264 (3) To be certified as a general appraiser, an applicant
 265 must present evidence satisfactory to the board that she or he
 266 has met the minimum education and experience requirements
 267 prescribed by rule of the board. The board shall prescribe
 268 education and experience requirements that meet or exceed the
 269 following real property appraiser qualification criteria adopted
 270 on February 20, 2004, by the Appraisal Qualifications Board of
 271 the Appraisal Foundation:

272 (a) Has at least 3,000 hours of experience obtained over a
 273 30-month period in real property appraisal as defined by rule.

274 (b) Has successfully completed at least 300 classroom
 275 hours, inclusive of examination, of approved academic courses in
 276 subjects related to real estate appraisal, which must ~~shall~~
 277 include a 15-hour National Uniform Standards of Professional
 278 Appraisal Practice course, or its equivalent, adopted by board
 279 rule, from a nationally recognized or state-recognized appraisal
 280 organization, career center, accredited community college,
 281 college, or university, state or federal agency or commission,
 282 or proprietary real estate school that holds a permit pursuant
 283 to s. 475.451. A classroom hour is defined as 50 minutes out of
 284 each 60-minute segment. Past courses may be approved by the
 285 board and substituted on an hour-for-hour basis.

286 Section 11. Subsection (1) of section 475.6175, Florida
 287 Statutes, is amended to read:

288 475.6175 Registered trainee appraiser; postlicensure
 289 education required.—

290 (1) The board shall prescribe postlicensure educational

20-00549-12 2012762

requirements in order for a person to maintain a valid registration as a registered trainee appraiser. If prescribed, the postlicensure educational requirements consist of one or more courses which total no more than the total educational hours required to qualify as a state certified residential appraiser. Such courses must be in subjects related to real estate appraisal and shall include coverage of the Uniform Standards of Professional Appraisal Practice, or its equivalent, adopted by board rule. Such courses are provided by a nationally or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451.

Section 12. Subsection (4) of section 475.6235, Florida Statutes, is amended to read:

475.6235 Registration of appraisal management companies required.—

(4) At the time of filing an application for registration of an appraisal management company, each person listed in paragraph (2)(f) must sign a pledge to comply with the standards of professional practice adopted by board rule, including standards for the development or communication of a real estate appraisal. Each person ~~Uniform Standards of Professional Appraisal Practice upon registration and~~ must also indicate in writing that she or he understands the types of misconduct for which disciplinary proceedings may be initiated. The application ~~expires shall expire~~ 1 year after the date it is received by the department.

Section 13. Subsection (14) of section 475.624, Florida

20-00549-12 2012762

Statutes, is amended to read:

475.624 Discipline of appraisers.—The board may deny an application for registration or certification of an appraiser; may investigate the actions of any appraiser registered, licensed, or certified under this part; may reprimand or impose an administrative fine not to exceed \$5,000 for each count or separate offense against any such appraiser; and may revoke or suspend, for a period not to exceed 10 years, the registration, license, or certification of any such appraiser, or place any such appraiser on probation, if the board finds that the registered trainee, licensee, or certificateholder:

(14) Has violated any standard of professional practice, including standards for the development or communication of a real estate appraisal, adopted by board rule ~~or other provision of the Uniform Standards of Professional Appraisal Practice~~.

Section 14. Paragraph (n) of subsection (1) of section 475.6245, Florida Statutes, is amended to read:

475.6245 Discipline of appraisal management companies.—

(1) The board may deny an application for registration of an appraisal management company; may investigate the actions of any appraisal management company registered under this part; may reprimand or impose an administrative fine not to exceed \$5,000 for each count or separate offense against any such appraisal management company; and may revoke or suspend, for a period not to exceed 10 years, the registration of any such appraisal management company, or place any such appraisal management company on probation, if the board finds that the appraisal management company or any person listed in s. 475.6235(2)(f):

(n) Has instructed an appraiser to violate any standard of

20-00549-12 2012762

349 professional practice adopted by board rule, including standards
 350 for the development or communication of a real estate appraisal
 351 or other provision of the Uniform Standards of Professional
 352 Appraisal Practice.

353 Section 15. Paragraphs (b) and (c) of subsection (1) of
 354 section 475.626, Florida Statutes, are amended, and present
 355 paragraphs (d) through (h) of that subsection are redesignated
 356 as paragraphs (b) through (f), respectively, to read:

357 475.626 Violations and penalties.—

358 (1) A person may not:

359 ~~(b) Violate any lawful order or rule of the board which is~~
 360 ~~binding upon her or him.~~

361 ~~(c) If a registered trainee appraiser or a licensed or~~
 362 ~~certified appraiser, commit any conduct or practice set forth in~~
 363 ~~s. 475.624.~~

364 Section 16. Section 475.628, Florida Statutes, is amended
 365 to read:

366 475.628 Professional standards for appraisers registered,
 367 licensed, or certified under this part.—The board shall adopt
 368 rules establishing standards of professional practice that meet
 369 or exceed nationally recognized standards of appraisal practice,
 370 including standards adopted by the Appraisal Standards Board of
 371 the Appraisal Foundation. Each appraiser registered, licensed,
 372 or certified under this part must ~~shall~~ comply with the rules
 373 adopted by the board ~~Uniform Standards of Professional Appraisal~~
 374 ~~Practice.~~ Statements on appraisal standards that are ~~which may~~
 375 ~~be~~ issued for the purpose of clarification, interpretation,
 376 explanation, or elaboration through the Appraisal Foundation are
 377 ~~shall~~ also ~~be~~ binding on any appraiser registered, licensed, or

20-00549-12 2012762

378 certified under this part, upon adoption by board rule.

379 Section 17. Subsection (1) of section 476.194, Florida
 380 Statutes, is amended to read:

381 476.194 Prohibited acts.—

382 (1) ~~A It is unlawful for any person may not to:~~

383 (a) Engage in the practice of barbering without an active
 384 license as a barber issued pursuant to the provisions of this
 385 chapter ~~act~~ by the department.

386 ~~(b) Engage in willful or repeated violations of this act or~~
 387 ~~of any of the rules adopted by the board.~~

388 (b)(e) Hire or employ any person to engage in the practice
 389 of barbering unless the ~~such~~ person holds a valid license as a
 390 barber.

391 (c)(d) Obtain or attempt to obtain a license for money
 392 other than the required fee or any other thing of value or by
 393 fraudulent misrepresentations.

394 (d)(e) Own, operate, maintain, open, establish, conduct, or
 395 have charge of, either alone or with another person or persons,
 396 a barbershop:

397 1. That ~~Which~~ is not licensed under ~~the provisions of~~ this
 398 chapter; or

399 2. In which a person not licensed as a barber is permitted
 400 to perform services.

401 (e)(f) Use or attempt to use a license to practice
 402 barbering which ~~when said license~~ is suspended or revoked.

403 Section 18. Subsection (2) of section 477.0212, Florida
 404 Statutes, is amended to read:

405 477.0212 Inactive status.—

406 (2) The board shall adopt ~~promulgate~~ rules relating to

20-00549-12 2012762
 407 licenses ~~that which have~~ become inactive and for the renewal of
 408 inactive licenses. The rules may not require more than one
 409 renewal cycle of continuing education in order to reactivate a
 410 license. The board shall prescribe by rule a fee not to exceed
 411 \$50 for the reactivation of an inactive license and a fee not to
 412 exceed \$50 for the renewal of an inactive license.

413 Section 19. Subsection (1) of section 477.0265, Florida
 414 Statutes, is amended to read:

415 477.0265 Prohibited acts.—

416 (1) A ~~It is unlawful for any person may not to:~~

417 (a) Engage in the practice of cosmetology or a specialty
 418 without an active license as a cosmetologist or registration as
 419 a specialist issued by the department under ~~pursuant to the~~
 420 ~~provisions of~~ this chapter.

421 (b) Own, operate, maintain, open, establish, conduct, or
 422 have charge of, either alone or with another person or persons,
 423 a cosmetology salon or specialty salon:

424 1. That which ~~is not licensed under the provisions of~~ this
 425 chapter; or

426 2. In which a person not licensed or registered as a
 427 cosmetologist or a specialist is permitted to perform
 428 cosmetology services or any specialty.

429 ~~(e) Engage in willful or repeated violations of this~~
 430 ~~chapter or of any rule adopted by the board.~~

431 ~~(c)(d)~~ Permit an employed person to engage in the practice
 432 of cosmetology or of a specialty unless such person holds a
 433 valid, active license as a cosmetologist or registration as a
 434 specialist.

435 ~~(d)(e)~~ Obtain or attempt to obtain a license or

20-00549-12 2012762
 436 registration for money, other than the required fee, or any
 437 other thing of value or by fraudulent misrepresentations.

438 ~~(e)(f)~~ Use or attempt to use a license to practice
 439 cosmetology or a registration to practice a specialty, which
 440 license or registration is suspended or revoked.

441 ~~(f)(g)~~ Advertise or imply that skin care services or body
 442 wrapping, as performed under this chapter, have any relationship
 443 to the practice of massage therapy as defined in s. 480.033(3),
 444 except those practices or activities defined in s. 477.013.

445 ~~(g)(h)~~ In the practice of cosmetology, use or possess a
 446 cosmetic product containing a liquid nail monomer containing any
 447 trace of methyl methacrylate (MMA).

448 Section 20. Subsection (1) of section 481.217, Florida
 449 statutes, is amended to read:

450 481.217 Inactive status.—

451 (1) The board may prescribe by rule continuing education
 452 requirements as a condition of reactivating a license. The rules
 453 may not require more than one renewal cycle of continuing
 454 education in order to reactivate requirements for reactivating a
 455 license for a registered architect or interior designer may not
 456 exceed 12 contact hours for each year the license was inactive.
 457 ~~The minimum continuing education requirement for reactivating a~~
 458 ~~license for a registered interior designer shall be those of the~~
 459 ~~most recent biennium plus one-half of the requirements in s.~~
 460 ~~481.215 for each year or part thereof during which the license~~
 461 ~~was inactive.~~ The board may ~~shall~~ only approve continuing
 462 education for an interior designer which ~~that~~ builds upon the
 463 basic knowledge of interior design.

464 Section 21. Subsection (1) of section 481.315, Florida

20-00549-12

2012762

Statutes, is amended to read:

481.315 Inactive status.—

(1) A license that has become inactive or delinquent may be reactivated under this section upon application to the department and payment of any applicable biennial renewal or delinquency fee, or both, and a reactivation fee. The board may not require a licensee to complete more than one renewal cycle of continuing education requirements in order to reactivate a license. ~~The board may prescribe by rule continuing education requirements as a condition of reactivating the license. The continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the license was inactive.~~

Section 22. Subsections (3) and (6) of section 489.116, Florida Statutes, are amended to read:

489.116 Inactive and delinquent status; renewal and cancellation notices.—

(3) An inactive status certificateholder or registrant may change to active status at any time, if provided the certificateholder or registrant meets all requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active status certificateholder or registrant, and pays any applicable late fees, and meets all continuing education requirements prescribed by the board.

(6) The board may not require an inactive certificateholder or registrant to complete more than one renewal cycle of shall comply with the same continuing education for reactivating a certificate or registration requirements, if any, that are imposed on an active status certificateholder or registrant.

20-00549-12

2012762

Section 23. Subsection (1) of section 489.519, Florida

Statutes, is amended to read:

489.519 Inactive status.—

(1) A certificate or registration that ~~becomes has become~~ inactive may be reactivated under s. 489.517 upon application to the department. The board may not require a licensee to complete more than one renewal cycle of prescribe, by rule, continuing education in order to reactivate requirements as a condition of reactivating a certificate or registration. ~~The continuing education requirements for reactivating a certificate or registration may not exceed 12 classroom hours for each year the certificate or registration was inactive.~~

Section 24. This act shall take effect July 1, 2012.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Budget - Subcommittee on General Government
Appropriations, *Chair*
Agriculture
Banking and Insurance
Budget
Budget - Subcommittee on Higher Education
Appropriations
Criminal Justice
Reapportionment

JOINT COMMITTEE:
Administrative Procedures

SENATOR D. ALAN HAYS
20th District

January 19, 2012

Senator Greg Evers, Chair
Criminal Justice Committee
308 Senate Office Building
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RE: SB 762 Practice of Professions Regulated by Department of Business and Professional Regulation

Dear Chair Evers:

I respectfully request my above bill be heard before your committee. I feel this bill would be a benefit to the citizens of this state.

Thank you in advance for your consideration, and please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "D. Alan Hays".

Senator D. Alan Hays
District 20

CC: **Amanda Cannon**, *Staff Director*
Sue Arnold, *Committee Administrative Assistant*

REPLY TO:

- ☐ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- ☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12

Meeting Date

Topic PROF. REGULATION

Bill Number SB 762
(if applicable)

Name MIKE HUSEY

Amendment Barcode 586280
(if applicable)

Job Title _____

Address 301 S. BROWNSH
Street

Phone 577-9090

TLH FL 32301
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FL. ASSN. OF THE AM. INSTITUTE OF ARCHITECTS

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)

2-9-12

Meeting Date

Topic _____

Bill Number 762
(if applicable)

Name Dale Calhoun

Amendment Barcode _____
(if applicable)

Job Title ~~CEO~~

Address 214 S Monroe St
Street

Phone 850 681 0496

Tallahassee FL 32301
City State Zip

E-mail _____

Speaking: ☒ ^{As amended} For ☐ Against ☐ Information

Representing Florida Natural Gas Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12
Meeting Date

Topic SB 762 Strike-All

Bill Number 762
(if applicable)

Name Mark Anderson

Amendment Barcode _____
(if applicable)

Job Title _____

Address 121 N. Monroe St.
Street

Phone 850-320-6659

#1401 Tallahassee 32301
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Chief Executive Officers of Management Company

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)

2/10/12
Meeting Date

Topic Practice of Professions Regulated by DBPR

Bill Number SB 762
(if applicable)

Name Matilde Miller

Amendment Barcode _____
(if applicable)

Job Title Deputy Director, Office of Legislative Affairs

Address 1940 N. Monroe St.
Street

Phone (850) 487.4827

Tall. FL 32399-2210
City State Zip

E-mail matilde.miller@dbpr.state.fl.us

Speaking: ☒ For ☐ Against ☐ Information

Representing DBPR

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)

2-9-12

Meeting Date

Topic Practice of Professions

Bill Number 762
(if applicable)

Name TRAVIS MOORE

Amendment Barcode 773988
(if applicable)

Job Title _____

Address P.O. Box 781
Street

Phone 727.421.6902

Largo FL 33779
City State Zip

E-mail moort@Tampabay.com

Speaking: ☒ For ☐ Against ☒ Information

Representing Community Association Leadership Lobby and
Community Associations Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

on the
Amendment

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

2/9/12

Meeting Date

Topic ~~Amendment~~ Strike all amendment

Bill Number 762
(if applicable)

Name Anthony DiMarco

Amendment Barcode 516614
(if applicable)

Job Title EUP

Address 1001 Thomasville Rd

Phone 224-2265

Street

Tallahassee FL 32303

City

State

Zip

E-mail adimarc@floridabankers.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Bankers Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/CS/SB 834

INTRODUCER: Criminal Justice Committee; Education Pre-K - 12 Committee; and Education Pre-K - 12 Committee

SUBJECT: Education Programs for Juvenile Justice Students

DATE: January 9, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	Matthews	ED	Fav/CS
2.	Dugger	Cannon	CJ	Fav/CS
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:

The bill is the culmination of the committee's interim project on education in Department of Juvenile Justice (DJJ) facilities.¹ It includes the recommendations of the Juvenile Justice Education Workgroup to improve the education outcomes of youth in DJJ facilities. The bill requires an evaluation of the effectiveness of school districts and private providers based upon the attainment of relevant academic and workforce skills that increase the likelihood of success upon release from a DJJ facility. School districts and private providers would be prohibited from providing educational services to youth in DJJ facilities if they fail to meet the above performance outcomes.

This bill substantially amends sections 985.03, 985.46, 985.618, 1009.25, 1011.62, creates section 1003.515, repeals section 1003.52, and makes conforming changes to sections 985.721, 985.632, 1001.42, 1002.20, 1002.45, 1003.01 and 1011.62 of the Florida Statutes.

¹ Senate Interim Report 2012-219, Delivery of Educational Services in the Department of Juvenile Justice Services, available at <http://www.flsenate.gov/Committees/InterimProjects/2012/>.

II. Present Situation:

Statutory requirements

Section 1003.52, F.S., establishes the educational expectations for DJJ youth in residential and day treatment programs.² The Department of Education (DOE) currently serves as the lead agency for juvenile justice education programs, curriculum, support services, and resources. Although district school boards are responsible for providing educational services to youth in juvenile justice programs, the DOE and DJJ are responsible for reporting the academic performance of students in juvenile justice programs, developing academic and career guidance to district school boards and providers in educational programming, and prescribing the roles of program personnel and school district or provider collaboration strategies.³

Current law states that education is the single most important factor in the rehabilitation of adjudicated delinquent youth and that the goal of the juvenile justice system is to allow these youth the opportunity to obtain a high-quality education.⁴ Unfortunately, the law only requires an education program that supports treatment goals and leads to a high school diploma or equivalent.⁵ Data collected on student achievement is based primarily on learning gains in reading and mathematics.⁶ Given the serious academic deficits many of these youth bring to the programs and the significant hurdles they will face in obtaining gainful employment, DJJ education programs must go beyond a high school diploma or equivalent and offer workforce skills that will lead to employment.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) reported concerns with a lack of meaningful student outcomes in DJJ facilities and recommended the evaluation of youth based on outcomes proven to reduce delinquency—continuing education and meaningful employment.⁷ Instead, educational programs are currently assigned quality assurance ratings based on on-site reviews and interviews of education services personnel.⁸

² DJJ programs provide oversight for approximately 150 residential, day treatment, and prevention programs in 43 counties. The majority of programs are operated under contract by private providers for services such as mental health, substance abuse treatment, plans for restitution, and transition services so that youth successfully re-enter their home communities.

³ s. 1003.52(1), F.S.

⁴ *Id.*

⁵ s. 1003.52(5), F.S.

⁶ Approximately 15 percent of DJJ students demonstrated learning gains in mathematics and reading during FY 2009-2010. Eighty-five percent failed to read on grade level and 78 percent scored below grade level on mathematics. See page 4, www.fldoe.org/ese/pdf/jj_annual.pdf.

⁷ OPPAGA Report 08-07, available at: <http://www.oppaga.state.fl.us/ReportsYearList.aspx?yearID=22>.

⁸ Quality assurance ratings include information relating to teacher certifications and qualifications, courses taught by each teacher, qualifications and duties of all educational support personnel, assessment information, progress monitoring data, and program characteristics (i.e., size, location, provider, career education level designated by the DJJ, security level, and age range of students), school names and numbers under which diplomas are reported, course offerings, class schedules, bell schedules, school calendars, curriculum information, fidelity checks, walk-through forms, and annual evaluations of the educational program. See also *Developing Effective Education in Department of Juvenile Justice and other Dropout Prevention Programs*, 2009-10, Department of Education, available at: www.fldoe.org/ese/pdf/jj_annual.pdf.

DJJ education program outcomes

The need to improve the educational outcomes of youth in DJJ facilities is documented through available data. On any given day, approximately 100,000 youth are in some form of juvenile justice placement, nationally.⁹ Obstacles to successful re-entry amplify the effects of the school-to-prison pipeline and increase the likelihood that these youth will find themselves returning to the justice system they just exited. Youth who return to school from juvenile justice placements have lower recidivism rates and a higher likelihood of successful re-entry into the community.¹⁰ Unfortunately, 79 percent of juvenile justice students in residential programs, who were age 16 or older and significantly behind academically, did not return to school upon release.¹¹

The Department of Education (DOE) provided data on youth released from DJJ programs over several years using information from the Florida Education and Training Placement Information Program (FETPIP). The DOE tracked youth in DJJ residential programs to determine occupational, educational, and subsequent judicial placement in the years following release from the program. To provide context, the DOE provided the same outcome information for high school dropouts and graduates. The chart shows that youth released from DJJ are returning to school at progressively lower rates over time. In addition, DJJ youth are similar to dropouts in that low percentages enroll in postsecondary education. Youth released from DJJ were also less likely to be employed than dropouts or high school graduates. Finally, DJJ youth, following release, are more likely to be incarcerated as adults than dropouts or high school graduates. Of those who were later incarcerated by the Department of Corrections, they were less likely to earn full time equivalent wages after leaving the DJJ program.

Information on DJJ Youth in Comparison to School Dropouts and High School Graduates

	Year Students Left Or Graduated 2006-07			Year Students Left or Graduated 2007-08		
	DJJ Leavers	Dropouts	HS Grads	DJJ Leavers	Dropouts	HS Grads
1. Number of students	7,395	25,144	127,258	6,041	19,640	131,128
2. Number and percent who returned to HS or MS at any point following release	2430	7,879	NA	634	5,471	NA
	33%	31%		10%	28%	
3. Number and percentage of DJJ Leavers who received a GED	1,557	NA	NA	1,288	NA	NA
	21%			21%		

⁹ See *The School to Prison Pipeline and Back*, New York Law School Review, Volume 54, 2009-10, pg. 1116, available at: www.nyls.edu/index.php?cID=2666.

¹⁰ *Id.*

¹¹ *Juvenile Justice Students Face Barriers to High School Graduation and Job Training*, OPPAGA, Report No. 10-55 (October 2010.)

	Year Students Left Or Graduated 2006-07			Year Students Left or Graduated 2007-08		
	DJJ Leavers	Dropouts	HS Grads	DJJ Leavers	Dropouts	HS Grads
4. Number and percent who enrolled in Postsecondary ED in the year following their release - continuing education	390 0%	1,520 6%	80,057 63%	364 6%	1,274 6%	82,741 63%
5. Number and percent who were employed in the year after release	1,502 20%	9,234 37%	69,117 54%	866 14%	5,437 28%	62,890 48%
6. Of those who were employed, number and percent who were employed with full time equivalent wages in the year after their release ¹²	231 15%	2,011 22%	15,032 22%	135 16%	1,239 28%	10,613 17%
7. Number and percent who were later incarcerated in a DOC facility (Followed through 2009-10)	1,197 16%	874 3%	271 0%	600 10%	503 3%	159 0%
8. Of those that were later incarcerated in a DOC facility, the number and percent employed in the year after release with full time equivalent wages ¹	20 2%	16 2%	29 11%	3 0%	2 0%	8 5%

Source: Florida Education and Training Placement Information Program

* Percentages less than .50% are rounded to (whole percentages) 0%.

Youth released from DJJ programs are most likely to reoffend within the first nine months of release.¹³ Of these recidivists, more than half will be rearrested within the first four months following program release. Although Florida and federal law¹⁴ require state and local agencies to provide for effective re-entry of youth into the community, 13 of the state's 67 school districts automatically place students in an alternative education setting despite recommendations from the DJJ program staff and statutory requirements to use those recommendations in re-entry placement decisions.¹⁵ Youth who have been involved in juvenile and criminal activity are not provided sufficient re-entry support to ensure that they do not re-offend.

The Center for Smart Justice¹⁶ reports that the \$240 million the state spends annually on residential facilities is not making Florida safer, but instead more vulnerable. Residential

¹² Full-time is determined by the wages equal to or greater than "minimum wages *13 weeks* 40 hours." If the wage amount is equal to or greater than this number, FETPIP considers the individual full-time for the quarter.

¹³ DJJ CAR Report, 2009-09, page 115.

¹⁴ Sections 1401(a), 1417(a), and 1422(d) of PL 107-110, No Child Left Behind Act of 2001; Sections 1003.52(5) (13)(i) and 985.618(1)(a)(b), F.S.; and State Board Rule 6A-6.05281.

¹⁵ See <http://www.fldoe.org/ese/sdte.asp>.

¹⁶ The Florida TaxWatch Center for Smart Justice was established in 2010 as a statewide research organization to ensure statewide justice reform through proven, cost-effective measures. The center is led by a board of civic and business leaders from across the state. See www.floridataxwatch.org/centers/CSJ/aboutsmartjustice.php.

facilities have higher recidivism rates than community-based alternatives, and repeated studies have proven that institutional programs make low-risk children more likely to re-offend.¹⁷

Juvenile Justice Education Workgroup

The Juvenile Justice Education Workgroup was created in the summer of 2011 to bring together stakeholders in juvenile justice education. The workgroup heard testimony concerning youth education outcomes in juvenile justice facilities. Cognizant of the significant challenges these youth will face in obtaining gainful employment, the workgroup recommended a revised accountability structure to evaluate the effectiveness of the education. In particular, the workgroup recommended evaluating DJJ education programs on the following: youth attainment of industry certifications in targeted, high-demand and high-wage fields; continuing education at the secondary or postsecondary level; job placement or self-employment; and attainment of postsecondary credit.

High-demand and high-wage employment

In an effort to improve the alignment of coursework to skills needed in high demand occupations, the Career and Professional Academy Act was enacted by the 2007 Legislature.¹⁸ The legislation requires the collaborative development of a strategic 5-year plan by school districts, regional workforce boards, postsecondary institutions, and private businesses to determine relevant workforce-related educational offerings to be delivered within the K-12 arena. As a result of the legislation, the number of career academies in the state's secondary schools has increased dramatically. High school students earned a total of 803 industry certifications in high demand occupations during the 2007-08 school year and 8,629 certifications in the 2009-10 school year.¹⁹ Of particular importance, the development of the 5-year plan specifically requires that strategies be included to involve youth in DJJ facilities.²⁰ During the 2010-11 FY, grant funding supported industry certifications for youth in DJJ programs through virtual course offerings. As a result of the funding, the DJJ reports that 72 youth earned OSHA (Office of Safety and Health Administration) industry certifications, 60 earned industry certifications in Microsoft Office Suites, and 13 earned OSHA+certifications (OSHA plus add-on certification in Aggression Management and/or Blood-borne Pathogens).²¹

III. Effect of Proposed Changes:

The Department of Juvenile Justice (DJJ)

The bill is a comprehensive effort to transform educational opportunities for youth in DJJ programs. Under the bill, the DOE is given authority to develop performance ratings for school

¹⁷ The Juvenile Justice Blueprint Commission found that youth who are kept in programs for prolonged lengths of time after treatment goals are achieved often begin to deteriorate and may be more likely to re-offend once release is finally achieved. See the *Report of the Blueprint Commission: Getting Smart About Juvenile Justice*, available at: <http://www.djj.state.fl.us/blueprint/index.html>.

¹⁸ ch. 2007-216, L.O.F.

¹⁹ Presentation by the Department of Education, Chancellor for Career and Adult Education, August 24, 2011, on file with the committee.

²⁰ See s. 1003.491(3)(j), F.S.

²¹ Data provided by DJJ Office of Educational Services, on file with the committee.

district and private providers based on identified student outcomes. School districts or private providers who fail to meet established performance thresholds for two years out of three, based on the specified outcomes, would no longer provide educational services to these youth. Instead, the school district would be required to contract with a school district or private provider with an adequate or higher performance rating to offer educational and workforce-related services to youth in these programs.

The DJJ, in consultation with the DOE, the Department of Economic Opportunity, school districts, and private providers, would adopt rules to implement provisions in the bill for which the DJJ is given responsibility.

The State Board of Education, in consultation with the DJJ, the Department of Economic Opportunity, school districts, and private providers, would adopt rules to establish performance ratings based on levels of attainment of outcomes. The bill requires the performance ratings to be weighted based on the rigor in attaining specified outcomes. Performance categories would include high, adequate, and failing. For purposes of determining performance ratings, school districts and private providers would be held accountable for student outcomes for no more than six months following the student's release from a residential or non-residential DJJ program.

Performance Outcomes

Education outcomes are designed to promote the successful return of adjudicated youth to their communities through employment in high demand occupations or continuing education. Outcomes established under the bill would differ based on the age-appropriate needs of the youth. Those 14 years or younger would be required to meet at least one of the following outcomes:

- Attainment of an industry certification in a targeted occupation²² and continuing education;²³
- Attainment of occupational completion points²⁴ in a targeted occupation and continuing education;
- Attainment of secondary or postsecondary credit and continuing education; or
- Achievement of academic progress in reading and mathematics²⁵ and continuing education.

²² In order to provide workforce skills in high demand occupations, the bill requires that industry certifications for these students be limited to those included on the Industry Certification Funding List pursuant to s. 1011.62(1)(o), F.S.

²³ For purposes of measuring student outcomes, continuing education would be defined based on the individual youth. Students of compulsory attendance age, for example, would be expected to continue their education within the secondary school arena in a supportive environment and an academic area that has meaning to them. Older youth who have attained a partial industry certification would enroll in an educational environment to complete the training, while those having attained full industry certification may wish to enhance those credentials with additional coursework.

²⁴ Occupational Completion Points (OCPs) are selected sets of student performance standards that fall between established occupational completion points, as identified in vocational job preparatory course descriptions. These selected standards guide the student in completing a modified program and developing marketable skills. See <http://www.fldoe.org/workforce/programs/ss5.asp>.

²⁵ Section 1003.52(3)(b), F.S., requires the DOE to select a valid assessment tool to measure learning gains in mathematics and reading.

Youth 15 years and older would be required to meet at least one of the following outcomes:

- Attainment of an industry certification in a targeted occupation and obtaining employment;²⁶
- Attainment of occupational completion points in a targeted occupation and continuing education to complete the industry certification;
- Attainment of occupational completion points and obtaining employment;
- Attainment of a high school diploma or its equivalent and continuing education;
- Attainment of a high school diploma or its equivalent and job employment;
- Earning secondary or postsecondary credit and continuing education; or
- Achievement of academic progress in reading and mathematics²⁷ and continuing education.

If a youth is in a residential or non-residential program for less than 40 days, the bill requires that the youth receives employability, life skills, and academic remediation, as appropriate. Counseling and transition services must also be provided.

Industry Certifications for Targeted Occupations

In an effort to promote academic engagement and relevant workforce skills, the bill establishes youth attainment of industry certifications as a key performance outcome. The DJJ program must collaborate with the regional workforce board and postsecondary institutions to determine the occupational areas of emphasis in the program. This provision will ensure that employment positions are currently or forecast to be available in the area in which the student is pursuing the certification. Additionally, it provides opportunities for industry certified volunteers from the community to provide support.

Access to Educational and Workforce-related Virtual Courses and Virtual Counseling

The bill requires juvenile justice education programs to provide access to virtual education instruction and virtual counseling to support the educational and workforce skills needed for adjudicated youth. This provision supports efficient use of the youth's time in a DJJ facility, by accelerating instructional opportunities during evenings and weekends, and expands access to courses, many of which result in high-demand industry certifications.²⁸

School District Contracts with Private Providers

School districts would continue to provide educational services or contract with a private provider to meet specified student outcomes, contingent upon a designated level of performance over time. The bill establishes that school districts that contract for educational services may not dictate personnel decisions if the contracted provider maintains a high performance rating. It also allows for certification of instructional personnel to be covered under the "expert in the field" provisions currently in law. These provisions promote flexibility to employ instructors who are

²⁶ The Industry Certification Funding List is available at: <https://www.fldoe.org/workforce/fcpea/pdf/1011icfl.pdf>.

²⁷ Section 1003.52(3)(b), F.S., requires the DOE to select a common assessment tool to measure academic progress in mathematics and reading.

²⁸ All 145 industry certifications earned by youth in DJJ programs during FY 2010-11 (OSHA and Microsoft Office Suites) were completed through virtual education courses.

highly effective in working with at-risk youth. Also, when determining educational placement for youth upon release, the school district must adhere to the transition plan. This provision promotes decisions made in the best interest of the youth and supports the transition and re-entry plan established during program stay.

Development of Transitions Plans for Successful Reintegration

The bill requires that an educational component to the transition plan be developed for youth to specify educational and other services to be provided during the youth's stay in the DJJ program, as well as services to be provided upon release. The educational component of the transition plan, developed in collaboration with the youth and the youth's family, would govern decisions regarding educational, workforce, and other services to ensure successful reintegration into the community.

Annual Report to the Legislature

The DJJ, with assistance from the DOE, school districts, and private providers, is required to submit an annual report to the Legislature beginning December 31, 2013. The report must include data on the level of attainment of performance outcomes by DJJ youth and include comparisons by demographics, by district and provider, and with students in traditional educational settings. The report must address the use of virtual education in attainment of outcomes and implementation of transition and reintegration plans for successful re-entry of youth into the community. Additionally, the report must provide recommendations for improving outcome measures and additional cost savings.

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:

Private providers that fail to meet performance expectations for two out of three years would be barred from providing education services to youth in DJJ facilities. These

entities may experience a reduction in revenue. High-performing providers may experience a positive fiscal impact.

The cost savings to taxpayers, although indeterminate, may be significant. Criminologists estimate that steering just one high-risk delinquent teen away from a life of crime saves society \$3 million to \$6 million in reduced victim costs and criminal justice expenses, plus increased wages and tax payments over the young person's lifetime.²⁹

C. Government Sector Impact:

School districts that fail to meet performance expectations for two out of three years would experience a reduction in revenue. High-performing school districts may experience a positive revenue impact.

Government cost savings, although indeterminate, may be significant. Youth are more likely to successfully return to their communities with educational success and meaningful workforce skills. When youth are successful, future crime and costly incarceration is prevented.

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/CS by Criminal Justice on February 9, 2012:

- Provides that the DJJ will work with enumerated entities to ensure that the educational component of the comprehensive annual report is developed collaboratively;
- Requires opportunities for eligible youth to earn a special diploma;
- Provides that a student who earns occupational completion points and is then employed upon release from a program will be one of the recognized outcomes under the bill;
- Clarifies that youth in detention centers are excluded from the provisions of the bill as most of these youth are there for two weeks or less;
- Juvenile justice education programs (school district operated and those operated by a private provider under contract with the school district) are accountable for student

²⁹ Missouri's current director of adult corrections credits their Department of Youth Services practices with saving the state millions of dollars by reducing the recidivism of juvenile offenders into adult prisons. See the Missouri Model, available at: www.aecf.org/~media/Pubs/.../MOModel/MO_Fullreport_webfinal.pdf.

performance outcomes no longer than six months following release of the youth from a program;

- Includes provisions for certification of instructional personnel in juvenile justice education programs to be covered under “expert in the field” provisions currently in statute; and
- Provides postsecondary fee exemptions for youth in residential programs who have received a high school diploma, are unemployed, and who began postsecondary coursework during their residential stay.

CS by the Education Pre-K – 12 Committee on December 6, 2011:

The committee substitute:

- Places authority to determine school district and private provider performance with the Department of Education, rather than the Department of Juvenile Justice;
- Adds occupational completion points as an acceptable youth outcome, provided the youth is placed in employment or continues his or her education to full industry certification;
- Adds academic progress in reading and mathematics as an outcome for high school age youth, provided that they continue their education upon release from the program;
- Removes student completion of comprehensive career exploration as a performance outcome;
- Requires that virtual education and workforce related counseling be made available to youth in education programs in juvenile justice facilities;
- Provides autonomy to private providers when selecting personnel, provided that they maintain high performing status; and
- Requires that an educational component be included in the transition plan developed during the youth’s stay in a program and that the educational component drive decisions for youth when they are released.

B. Amendments:

None.



773988

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2012	.	
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	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (30) through (57) of section 985.03, Florida Statutes, are redesignated as subsections (31) through (58), respectively, and a new subsection (30) is added to that section, to read:

985.03 Definitions.—As used in this chapter, the term:
(30) "Juvenile justice education programs" has the same meaning as provided in s. 1003.01(11)(a).

Section 2. Subsection (6) is added to section 985.46,



773988

Florida Statutes, to read:

985.46 Conditional release.—

(6) Each juvenile committed to a commitment program shall have a transition plan upon release. Transition planning shall begin for each juvenile upon placement in a commitment program and shall result in an individual transition plan for each youth before he or she is released. The transition plan shall be developed with the participation of the youth, representatives of the commitment program, school district personnel, and representatives of conditional release or postcommitment probation programs, if appropriate. The transition plan shall include an education transition plan component as provided in s. 1003.515(10), as well as information regarding pertinent delinquency treatment and intervention services that are accessible upon exiting the program.

(a) For a juvenile who is released on conditional release or postcommitment probation status, the transition plan shall be incorporated into the conditions of release.

(b) For a juvenile who is not released on conditional release or postcommitment probation status, the transition plan shall be explained to the youth and provided upon release, with all necessary referrals having been made at least 30 days before the youth exits the program.

(c) For a juvenile who participates in a nonresidential program, the transition plan shall be explained to the youth and provided upon release. For a juvenile who participates in a nonresidential program and who is released on conditional release or postcommitment probation status, the transition plan shall be incorporated into the conditions of release.



773988

Section 3. Section 985.618, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 985.618, F.S., for present text.)

985.618 Education and workforce-related programs.—

(1) The Legislature intends for youth in juvenile justice programs to be provided a quality education that includes workforce-related skills that lead to continuing education or meaningful employment, or both, and that results in reduced rates of recidivism.

(2) The department, in collaboration with the Department of Education, shall annually verify that each juvenile justice education program, at a minimum:

(a) Provides access to virtual course offerings that maximize learning opportunities for youth.

(b) Encourages access to virtual counseling to address the educational and workforce needs of adjudicated youth.

(c) Provides instruction from individuals who hold industry credentials in the occupational areas in which they teach.

(d) Ensures student access to instruction during evenings and weekends.

(e) Considers, before placement, the age, interests, prior education, training, work experience, emotional and mental abilities, treatment needs, and physical capabilities of the youth and the duration of the term of placement imposed.

(f) Provides specialized instruction, related services, accommodations, and modifications as are necessary to ensure the provision of a free, appropriate public education for students with disabilities.



773988

71 (g) Expends funds in a manner that directly supports the
72 attainment of successful student outcomes as specified in s.
73 1003.515(7) and that allows youth to engage in real work
74 situations whenever possible.

75 (3) The department shall collaborate with the Department of
76 Education, the Department of Economic Opportunity, school
77 districts, and private providers to adopt rules to administer
78 this section.

79 Section 4. Section 985.632, Florida Statutes, is amended to
80 read:

81 985.632 Quality assurance and cost-effectiveness.—

82 (1) It is the intent of the Legislature that the
83 department:

84 (a) Ensure that information be provided to decisionmakers
85 in a timely manner so that resources are allocated to programs
86 of the department which achieve desired performance levels.

87 (b) Provide information about the cost of such programs and
88 their differential effectiveness so that the quality of such
89 programs can be compared and improvements made continually.

90 (c) Provide information to aid in developing related policy
91 issues and concerns.

92 (d) Provide information to the public about the
93 effectiveness of such programs in meeting established goals and
94 objectives.

95 (e) Provide a basis for a system of accountability so that
96 each client is afforded the best programs to meet his or her
97 needs.

98 (f) Improve service delivery to clients.

99 (g) Modify or eliminate activities that are not effective.



773988

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

(a) "Client" means any person who is being provided treatment or services by the department or by a provider under contract with the department.

(b) "Program component" means an aggregation of generally related objectives which, because of their special character, related workload, and interrelated output, can logically be considered an entity for purposes of organization, management, accounting, reporting, and budgeting.

(c) "Program effectiveness" means the ability of the program to achieve desired client outcomes, goals, and objectives.

(3) The department shall annually collect and report cost data for every program operated by the department or its contracted provider ~~or contracted by the department~~. The cost data shall conform to a format approved by the department and the Legislature. Uniform cost data shall be reported and collected for each education program operated by a school district or private provider contracted by a school district ~~state-operated and contracted programs~~ so that comparisons can be made among programs. The Department of Education shall ensure that there is accurate cost accounting for education programs operated by school districts, including those programs operated by private providers under contract with school districts ~~state-operated services including market equivalent rent and other shared cost. The cost of the educational program provided to a residential facility shall be reported and included in the cost of a program.~~ The Department of Education shall submit ~~an~~ annual cost data ~~report~~ to the department ~~President of the Senate, the~~



773988

~~Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year. The annual cost data shall be included in the annual report required in subsection (7). Cost-benefit analysis for juvenile justice education ~~educational~~ programs shall ~~will~~ be developed and implemented in collaboration with and in cooperation with the Department of Education, local providers, and local school districts. ~~Cost data for the report shall include data collected by the Department of Education for the purposes of preparing the annual report required by s. 1003.52(19).~~~~

(4) (a) The department, in consultation with the Office of Economic and Demographic Research and contract service providers, shall develop a cost-effectiveness model and apply the model to each commitment program. Program recidivism rates shall be a component of the model. The cost-effectiveness model shall compare program costs to client outcomes and program outputs. It is the intent of the Legislature that continual development efforts take place to improve the validity and reliability of the cost-effectiveness model.

(b) The department shall rank commitment programs based on the cost-effectiveness model and shall submit a report to the appropriate substantive and fiscal committees of each house of the Legislature by December 31 of each year.

(c) Based on reports of the department on client outcomes and program outputs and on the department's most recent cost-effectiveness rankings, the department may terminate a program operated by the department or a provider if the program has



773988

failed to achieve a minimum threshold of program effectiveness. This paragraph does not preclude the department from terminating a contract as provided under this section or as otherwise provided by law or contract, and does not limit the department's authority to enter into or terminate a contract.

(d) In collaboration with the Office of Economic and Demographic Research, and contract service providers, the department shall develop a work plan to refine the cost-effectiveness model so that the model is consistent with the performance-based program budgeting measures approved by the Legislature to the extent the department deems appropriate. The department shall notify the Office of Program Policy Analysis and Government Accountability of any meetings to refine the model.

(e) Contingent upon specific appropriation, the department, in consultation with the Office of Economic and Demographic Research, and contract service providers, shall:

1. Construct a profile of each commitment program that uses the results of the quality assurance report required by this section, the cost-effectiveness report required in this subsection, and other reports available to the department.

2. Target, for a more comprehensive evaluation, any commitment program that has achieved consistently high, low, or disparate ratings in the reports required under subparagraph 1.

3. Identify the essential factors that contribute to the high, low, or disparate program ratings.

4. Use the results of these evaluations in developing or refining juvenile justice programs or program models, client outcomes and program outputs, provider contracts, quality



773988

assurance standards, and the cost-effectiveness model.

(5) (a) Program effectiveness shall be determined by implementing systematic data collection, data analysis, and education and workforce-related program evaluations pursuant to this section and s. 1003.515.

(b) The evaluation of juvenile justice education and workforce-related programs shall be based on the performance outcomes provided in s. 1003.515(7).

(6) ~~(5)~~ The department shall:

(a) Establish a comprehensive quality assurance system for each program operated by the department or its contracted provider ~~operated by a provider under contract with the department~~. Each contract entered into by the department must provide for quality assurance.

(b) Provide operational definitions of and criteria for quality assurance for each specific program component.

(c) Establish quality assurance goals and objectives for each specific program component.

(d) Establish the information and specific data elements required for the quality assurance program.

(e) Develop a quality assurance manual of specific, standardized terminology and procedures to be followed by each program.

(f) Evaluate each program operated by the department or its contracted ~~a provider under a contract with the department~~ and establish minimum thresholds for each program component. If a provider fails to meet the established minimum thresholds, such failure shall cause the department to cancel the provider's contract unless the provider achieves compliance with minimum



773988

thresholds within 6 months or unless there are documented
extenuating circumstances. In addition, the department may not
contract with the same provider for the canceled service for a
period of 12 months. If a department-operated program fails to
meet the established minimum thresholds, the department must
take necessary and sufficient steps to ensure and document
program changes to achieve compliance with the established
minimum thresholds. If the department-operated program fails to
achieve compliance with the established minimum thresholds
within 6 months and if there are no documented extenuating
circumstances, the department must notify the Executive Office
of the Governor and the Legislature of the corrective action
taken. Appropriate corrective action may include, but is not
limited to:

1. Contracting out for the services provided in the
program;
2. Initiating appropriate disciplinary action against all
employees whose conduct or performance is deemed to have
materially contributed to the program's failure to meet
established minimum thresholds;
3. Redesigning the program; or
4. Realigning the program.

The department shall submit an annual report to the President of
the Senate, the Speaker of the House of Representatives, the
Minority Leader of each house of the Legislature, the
appropriate substantive and fiscal committees of each house of
the Legislature, and the Governor, no later than February 1 of
each year. The annual report must contain, at a minimum, for



773988

each specific program component: a comprehensive description of the population served by the program; a specific description of the services provided by the program; cost; a comparison of expenditures to federal and state funding; immediate and long-range concerns; and recommendations to maintain, expand, improve, modify, or eliminate each program component so that changes in services lead to enhancement in program quality. The department shall ensure the reliability and validity of the information contained in the report.

(7) The department, in collaboration with the Department of Education and in consultation with the school districts and private juvenile justice education program providers, shall prepare an annual report containing the education performance outcomes, based on the criteria in s. 1003.515(7), of youth in juvenile justice education programs. The report shall delineate the performance outcomes of youth in the state, in each school district's juvenile justice education program, and for each private provider's juvenile justice education program, including the performance outcomes of all major student populations and genders, as determined by the Department of Education. The report shall address the use and successful completion of virtual instruction courses and the successful implementation of transition and reintegration plans. The report must include an analysis of the performance of youth over time, including, but not limited to, additional education attainment, employment, earnings, industry certification, and rates of recidivism. The report must also include recommendations for improving performance outcomes and for additional cost savings and efficiencies. The report shall be submitted to the Governor, the



773988

President of the Senate, and the Speaker of the House of
Representatives by December 31, 2013, and each year thereafter.

(8)~~(6)~~ The department shall collect and analyze available
statistical data for the purpose of ongoing evaluation of all
programs. The department shall provide the Legislature with
necessary information and reports to enable the Legislature to
make informed decisions regarding the effectiveness of, and any
needed changes in, services, programs, policies, and laws.

Section 5. Section 985.721, Florida Statutes, is amended to
read:

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

(1) Any secure detention facility maintained for the
temporary detention of children, pending adjudication,
disposition, or placement;

(2) Any residential commitment facility described in s.
985.03(46) ~~985.03(45)~~, maintained for the custody, treatment,
punishment, or rehabilitation of children found to have
committed delinquent acts or violations of law; or

(3) Lawful transportation to or from any such secure
detention facility or residential commitment facility,

constitutes escape within the intent and meaning of s. 944.40
and is a felony of the third degree, punishable as provided in
s. 775.082, s. 775.083, or s. 775.084.

Section 6. Paragraph (b) of subsection (18) of section
1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.—The
district school board, acting as a board, shall exercise all



773988

powers and perform all duties listed below:

(18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—
Maintain a state system of school improvement and education
accountability as provided by statute and State Board of
Education rule. This system of school improvement and education
accountability shall be consistent with, and implemented
through, the district's continuing system of planning and
budgeting required by this section and ss. 1008.385, 1010.01,
and 1011.01. This system of school improvement and education
accountability shall comply with the provisions of ss. 1008.33,
1008.34, 1008.345, and 1008.385 and include the following:

(b) *Public disclosure.*—The district school board shall
provide information regarding the performance of students in ~~and~~
education ~~educational~~ programs as required pursuant to ss.
1008.22 and 1008.385 and implement a system of school reports as
required by statute and State Board of Education rule which
shall include schools operating for the purpose of providing
education ~~educational~~ services to youth in Department of
Juvenile Justice residential and nonresidential programs, and
for those programs ~~schools~~, report on the data and education
outcomes ~~elements~~ specified in s. 1003.515(7) ~~1003.52(19)~~.
Annual public disclosure reports shall be in an easy-to-read
report card format and shall include the school's grade, high
school graduation rate calculated without GED tests,
disaggregated by student ethnicity, and performance data as
specified in state board rule.

Section 7. Subsection (20) of section 1002.20, Florida
Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public



773988

school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(20) JUVENILE JUSTICE PROGRAMS.—Students who are in juvenile justice programs have the right to receive educational programs and services in accordance with the provisions of s. 1003.515 ~~1003.52~~.

Section 8. Paragraph (b) of subsection (1) of section 1002.45, Florida Statutes, is amended to read:

1002.45 Virtual instruction programs.—

(1) PROGRAM.—

(b) Each school district that is eligible for the sparsity supplement pursuant to s. 1011.62(7) shall provide all enrolled public school students within its boundaries the option of participating in part-time and full-time virtual instruction programs. Each school district that is not eligible for the sparsity supplement shall provide at least three options for part-time and full-time virtual instruction. All school districts must provide parents with timely written notification of an open enrollment period for full-time students of at least 90 days that ends no later than 30 days before ~~prior to~~ the first day of the school year. The purpose of the program is to make quality virtual instruction available to students using online and distance learning technology in the nontraditional classroom. A school district virtual instruction program shall provide the following:

1. Full-time virtual instruction for students enrolled in



773988

kindergarten through grade 12.

2. Part-time virtual instruction for students enrolled in grades 9 through 12 courses that are measured pursuant to subparagraph (8)(a)2.

3. Full-time or part-time virtual instruction for students enrolled in dropout prevention and academic intervention programs under s. 1003.53, Department of Juvenile Justice education programs under s. 1003.515 ~~1003.52~~, core-curricula courses to meet class size requirements under s. 1003.03, or Florida College System institutions under this section.

Section 9. Paragraph (a) of subsection (11) of section 1003.01, Florida Statutes, is amended to read:

1003.01 Definitions.—As used in this chapter, the term:

(11)(a) "Juvenile justice education programs ~~or schools~~" means programs ~~or schools~~ operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs, for a school year comprised of 250 days of instruction distributed over 12 months. At the request of the provider, a district school board may decrease the minimum number of days of instruction by up to 10 days for teacher planning for residential programs and up to 20 days for teacher planning for nonresidential programs, subject to the approval of the Department of Juvenile Justice and the Department of Education.

Section 10. Section 1003.515, Florida Statutes, is created to read:

1003.515 The Florida Juvenile Justice Education Act.—

(1) SHORT TITLE.—This section may be cited as the "Florida Juvenile Justice Education Act."

(2) LEGISLATIVE FINDING.—The Legislature finds that an



773988

education is the single most important factor in the
rehabilitation of adjudicated youth who are in Department of
Juvenile Justice residential and nonresidential programs.

(3) PURPOSES.—The purposes of this section are to:

(a) Provide performance-based outcome measures and
accountability for juvenile justice education programs; and

(b) Improve academic and workforce-related outcomes so that
adjudicated and at-risk youth may successfully complete the
transition to and reenter the academic and workforce
environments.

(4) DEFINITION.—For purposes of this section, the term
“juvenile justice education programs” has the same meaning as in
s. 1003.01(11)(a).

(5) SCHOOL DISTRICT AND CONTRACTED EDUCATION PROVIDER
RESPONSIBILITIES.—

(a) A school district or private provider contracted by a
school district to offer education services to youth in a
juvenile justice education program shall:

1. Provide rigorous and relevant academic and workforce-
related curricula that will lead to industry certifications in
an occupational area of high demand identified in the Industry
Certification Funding list adopted by the State Board of
Education, or articulate to secondary or postsecondary-level
coursework, as appropriate.

2. Support state, local, and regional economic development
demands.

3. Make high-wage and high-demand careers more accessible
to adjudicated and at-risk youth.

4. Reduce rates of recidivism for adjudicated youth.



773988

419 5. Provide access to the appropriate courses and
420 instruction to prepare youth for a standard high school diploma,
421 a special diploma, or a high school equivalency diploma, as
422 appropriate.

423 6. Provide access to virtual education courses that are
424 appropriate to meet the requirements of academic or workforce-
425 related programs and the requirements for continuing education
426 specified in the youth's transition and postrelease plans.

427 7. Provide opportunities for earning credits toward high
428 school graduation or credits that articulate to postsecondary
429 education institutions while the youth are in residential and
430 nonresidential juvenile justice facilities.

431 8. Ensure that the credits and partial credits earned by
432 the youth are transferred and included in the youth's records as
433 part of the transition plan.

434 9. Ensure that the education program consists of the
435 appropriate academic, workforce-related, or exceptional
436 education curricula and related services that directly support
437 performance outcomes, which must be specified in each youth's
438 education transition plan component as required by subsection
439 (10).

440 10. If the duration of a youth's stay in a program is less
441 than 40 days, ensure that the youth receives employability, life
442 skills, and academic remediation, as appropriate. In addition,
443 counseling and transition services must be provided which
444 mitigate the youth's identified risk factors and prepare the
445 youth for a successful reintegration into the school, community,
446 and home settings.

447 11. Maintain an academic record for each youth who is



773988

enrolled in a juvenile justice facility, as required by s. 1003.51, and ensure that the coursework, credits, partial credits, occupational completion points, and industry certifications earned by the youth are transferred and included in the youth's transition plan pursuant to s. 985.46.

(b) Each school district and private provider shall ensure that the following youth participate in the program:

1. Youth who are of compulsory school attendance age pursuant to s. 1003.21.

2. Youth who are not of compulsory school attendance age and who have not received a high school diploma or its equivalent, if the youth is in a residential or nonresidential juvenile justice program. Such youth must participate in the education program and participate in a workforce-related education program that leads to industry certification in an occupational area of high demand. This subparagraph does not limit the rights of students with disabilities, as defined under the Individuals with Disabilities Education Act, who are not of compulsory school attendance age and who have not received a high school diploma to receive a free, appropriate public education in accordance with their individualized needs.

3. Youth who have attained a high school diploma or its equivalent and who are not employed. Such youth must participate in a workforce-related education program that leads to employment in an occupational area of high demand. Such youth may enroll in a state postsecondary institution to complete the workforce-related education program and are exempt from the payment of tuition and fees pursuant to s. 1009.25(1)(g).

(6) PROGRAM REQUIREMENTS.—In compliance with the strategic



773988

5-year plan under s. 1003.491, each juvenile justice residential and nonresidential education program shall, in collaboration with the regional workforce board or economic development agency and local postsecondary institutions, determine the appropriate occupational areas for the program. Juvenile justice education programs must:

(a) Ensure that rigorous academic and workforce-related coursework is offered and meets or exceeds appropriate state-approved subject area standards, and results in the attainment of industry certification and postsecondary credit, when appropriate;

(b) Ensure instruction from individuals who hold industry credentials in the occupational areas in which they teach;

(c) Maximize the use of private sector personnel;

(d) Use strategies to maximize the delivery of virtual instruction;

(e) Maximize instructional efficiency for youth in juvenile justice facilities;

(f) Provide opportunities for youth to earn weighted or dual enrollment credit for higher-level courses, when appropriate;

(g) Promote credit recovery; and

(h) Provide instruction that results in competency, certification, or credentials in workplace skills, including, but not limited to, communication skills, interpersonal skills, decisionmaking skills, work ethic, and the importance of attendance and timeliness in the work environment.

(7) DEPARTMENT RESPONSIBILITIES.—

(a) The department shall identify each residential and



773988

nonresidential juvenile justice education program, excluding
detention programs, as having one of the following performance
ratings as defined by State Board of Education rule:

1. High performance.

2. Adequate performance.

3. Failing performance.

(b) The department shall consider the level of rigor
associated with the attainment of a particular outcome when
assigning weight to the outcome. The department shall evaluate
the following elements in determining a juvenile justice
education program's performance rating:

1. One or more of the following outcomes for a youth who is
14 years of age or younger:

a. Achieving academic progress in reading and mathematics,
as measured by the statewide common pre- and post-assessment
adopted by the department for use in juvenile justice education
programs, and participating in continuing education upon release
from a juvenile justice residential or nonresidential program.

b. Completing secondary coursework and participating in
continuing education upon release from a juvenile justice
residential or nonresidential program.

c. Attaining occupational completion points in an
occupational area of high demand identified in the Industry
Certification Funding list adopted by the State Board of
Education and participating in continuing education upon release
from a juvenile justice residential or nonresidential program.

d. Attaining an industry certification in an occupational
area of high demand identified in the Industry Certification
Funding list adopted by the State Board of Education, if



773988

available and appropriate, and participating in continuing education upon release from a juvenile justice residential or nonresidential program.

2. One or more of the following outcomes for a youth who is 15 years of age or older:

a. Achieving academic progress in reading and mathematics, as measured by the statewide common pre- and post-assessment adopted by the department for use in juvenile justice education programs, and participating in continuing education upon release from a juvenile justice residential or nonresidential program.

b. Earning secondary or postsecondary credit upon release from a juvenile justice facility and participating in continuing education upon release from a juvenile justice residential or nonresidential program.

c. Attaining a high school diploma or its equivalent and participating in continuing education at the postsecondary level upon release from a juvenile justice residential or nonresidential program.

d. Attaining a high school diploma or its equivalent and obtaining employment.

e. Attaining an industry certification in an occupational area of high demand identified in the Industry Certification Funding list adopted by the State Board of Education and obtaining employment.

f. Attaining occupational completion points in an occupational area of high demand and obtaining employment.

g. Attaining occupational completion points in an occupational area of high demand identified in the Industry Certification Funding list adopted by the State Board of



773988

Education and, upon release from a juvenile justice residential or nonresidential program, participating in continuing education in order to complete the industry certification in that occupation.

(c) By September 1, 2012, the department shall make available a common student pre- and post-assessment to measure the academic progress in reading and mathematics of youth who are assigned to juvenile justice education programs.

For purposes of performance ratings, juvenile justice residential and nonresidential education programs, excluding detention centers, shall be held accountable for the performance outcomes of youth for no more than 6 months after the release of youth from the residential or nonresidential program. This subsection does not abrogate the provisions of s. 1002.22 which relate to education records or the requirements of 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act.

(8) PROGRAM ACCOUNTABILITY.—

(a) The department shall, in collaboration with the Department of Juvenile Justice:

1. Monitor the education performance of youth in juvenile justice facilities.

2. Prohibit school districts or private providers that have failing performance ratings from delivering the education services.

3. Verify that a school district is operating or contracting with a private provider to deliver education services.

(b) If a school district's juvenile justice residential or



773988

nonresidential education program earns two failing performance ratings in any 3-year period, as provided in subsection (7), the school district shall contract with a private provider that has an adequate or higher performance rating or enter into an agreement with a school district that has an adequate or higher performance rating to deliver the education services to the youth in the program.

(c) Except as provided in paragraph (b), the school district of the county in which the residential or nonresidential facility is located shall deliver education services to youth in Department of Juvenile Justice programs. A school district may contract with a private provider to deliver the education services in lieu of directly providing the education services. The contract shall include performance criteria as provided in subsection (7).

(d) When determining educational placement for youth who enroll in a school district upon release, the school district must adhere to the transition plan established under s. 985.46(6).

(e) If a private provider under contract with a school district maintains a high-performance rating pursuant to subsection (7), the school district may not require a private provider to use the school district's personnel.

(f) Academic instructional personnel must be certified by the Department of Education; however, a nondegreed teacher of career education may be certified by a local school district under s. 1012.39 and may be designated as teaching out-of-field. An instructor who is deemed to be an expert in a specific field may be employed under s. 1012.55(1).



773988

(g) Each school district must provide juvenile justice education programs access to substitute classroom teachers used by the school district.

(9) EXITING PROGRAM.—Upon exiting a program, a youth must:

(a) Attain an industry certification in an occupational area of high demand identified in the Industry Certification Funding list adopted by the State Board of Education;

(b) Enroll in a program to complete the industry certification;

(c) Be gainfully employed and earning full-time wages; or

(d) Enroll in and continue his or her education based on the transition and postrelease plan provided in s. 958.46.

(10) EDUCATION TRANSITION PLAN COMPONENT.—

(a) The education transition plan component shall be incorporated in the transition plan pursuant to s. 985.46(6).

(b) Each juvenile justice education program must develop an education transition plan component during the course of a youth's stay in a juvenile justice residential or nonresidential program which coordinates academic and workforce services and assists the youth in successful community reintegration upon the youth's release.

(c) The development of the education transition plan component shall begin upon a youth's placement in the program. The education transition plan component must include the academic and workforce services to be provided during the program stay and the establishment of services to be implemented upon release. The appropriate personnel in the juvenile justice residential and nonresidential program, the members of the community, the youth, and the youth's family, when appropriate,



773988

shall collaborate to develop the education transition plan component.

(d) Education planning for reintegration shall begin when placement decisions are made and continue throughout the youth's stay in order to provide for continuing education, job placement, and other necessary services. Individuals who are responsible for reintegration shall coordinate activities to ensure that the education transition plan component is successfully implemented and a youth is provided access to support services that will sustain the youth's success once he or she is no longer under the supervision of the Department of Juvenile Justice. The education transition plan component must provide for continuing education, workforce development, or meaningful job placement pursuant to the performance outcomes in subsection (7). For purposes of this section, the term "reintegration" means the process by which a youth returns to the community following release from a juvenile justice program.

(11) FUNDING.—

(a) Youth who are participating in GED preparation programs while under the supervision of the Department of Juvenile Justice shall be funded at the basic program cost factor for juvenile justice programs in the Florida Education Finance Program (FEFP). Juvenile justice education programs shall be funded in the appropriate FEFP program based on the education services needed by the students in the programs pursuant to s. 1011.62.

(b) Juvenile justice education programs operated through a contract with the Department of Juvenile Justice and under the purview of the department's quality assurance standards and



773988

performance outcomes shall receive the appropriate FEFP funding for juvenile justice programs.

(c) A district school board shall fund the education program in a juvenile justice facility at the same or higher level of funding for equivalent students in the district school system based on the funds generated through the FEFP and funds allocated from federal programs.

(d) Consistent with the rules of the State Board of Education, district school boards shall request an alternative full-time equivalent (FTE) survey for juvenile justice programs experiencing fluctuations in student enrollment.

(e) The State Board of Education shall prescribe rules relating to FTE count periods which must be the same for juvenile justice programs and other public school programs. The summer school period for students in juvenile justice programs shall begin on the day immediately preceding the subsequent regular school year. Students may be funded for no more than 25 hours per week of direct instruction; however, students shall be provided access to virtual instruction in order to maximize the most efficient use of time.

(12) FACILITIES.—The district school board may not be charged any rent, maintenance, utilities, or overhead on the facilities. Maintenance, repairs, and remodeling of existing facilities shall be provided by the Department of Juvenile Justice.

(13) RULEMAKING.—The State Board of Education shall collaborate with the Department of Juvenile Justice, the Department of Economic Opportunity, school districts, and private providers to adopt rules pursuant to ss. 120.536(1) and



773988

120.54 to administer this section.

Section 11. Section 1003.52, Florida Statutes, is repealed.

Section 12. Present paragraph (g) of subsection (1) of section 1009.25, Florida Statutes, is redesignated as paragraph (h), and a new paragraph (g) is added to that subsection, to read:

1009.25 Fee exemptions.—

(1) The following students are exempt from the payment of tuition and fees, including lab fees, at a school district that provides postsecondary career programs, Florida College System institution, or state university:

(g) For purposes of completing coursework initiated while in the temporary custody of the state, youth who are eligible under s. 1003.515(5)(b)3. and who are ordered by a court to participate in a juvenile justice residential program.

Section 13. Paragraph (f) of subsection (1) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR OPERATION.—The following procedure shall be followed in determining the annual allocation to each district for operation:

(f) *Supplemental academic instruction; categorical fund.*—

1. There is created a categorical fund to provide



773988

supplemental academic instruction to students in kindergarten through grade 12. This paragraph may be cited as the "Supplemental Academic Instruction Categorical Fund."

2. Categorical funds for supplemental academic instruction shall be allocated annually to each school district in the amount provided in the General Appropriations Act. These funds shall be in addition to the funds appropriated on the basis of FTE student membership in the Florida Education Finance Program and shall be included in the total potential funds of each district. These funds shall be used to provide supplemental academic instruction to students enrolled in the K-12 program. Supplemental instruction strategies may include, but are not limited to: modified curriculum, reading instruction, after-school instruction, tutoring, mentoring, class size reduction, extended school year, intensive skills development in summer school, and other methods for improving student achievement. Supplemental instruction may be provided to a student in any manner and at any time during or beyond the regular 180-day term identified by the school as being the most effective and efficient way to best help that student progress from grade to grade and to graduate.

3. Effective with the 2012-2013 ~~1999-2000~~ fiscal year, funding on the basis of FTE membership beyond the 180-day regular term shall be provided in the FEFP only for students enrolled in juvenile justice education programs or in education programs for juveniles placed in secure facilities or programs under s. 985.19. Funding for instruction beyond the regular 180-day school year for all other K-12 students shall be provided through the supplemental academic instruction categorical fund



773988

and other state, federal, and local fund sources with ample flexibility for schools to provide supplemental instruction to assist students in progressing from grade to grade and graduating.

4. The Florida State University School, as a lab school, is authorized to expend from its FEFP or Lottery Enhancement Trust Fund allocation the cost to the student of remediation in reading, writing, or mathematics for any graduate who requires remediation at a postsecondary educational institution.

5. ~~Beginning in the 1999-2000 school year,~~ Dropout prevention programs as defined in ss. 1003.515 ~~1003.52~~, 1003.53(1)(a), (b), and (c), and 1003.54 shall be included in group 1 programs under subparagraph (d)3.

Section 14. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to juvenile justice education and workforce programs; amending s. 985.03, F.S.; providing a definition for the term "juvenile justice education programs" for purposes of the act; amending s. 985.46, F.S.; requiring that each juvenile committed to a juvenile justice commitment program have a transition plan upon release; requiring that the transition plan include an education transition plan component and information regarding delinquency



773988

treatment and intervention services that are accessible upon exiting the program; amending s. 985.618, F.S.; providing legislative intent regarding juvenile justice education and workforce-related programs; requiring that the Department of Juvenile Justice, in collaboration with the Department of Education, annually verify that each juvenile justice education program meets specified minimum standards; requiring that the department collaborate with certain entities to adopt rules; amending s. 985.632, F.S.; conforming provisions to changes made by the act; requiring that the Department of Education rather than the Department of Juvenile Justice ensure that there is accurate cost accounting for certain education programs; requiring that the Department of Education submit annual cost data to the department; requiring that the effectiveness of juvenile justice education programs be determined by implementing systematic data collection, data analysis, and evaluations; requiring that the programs be evaluated based on student performance outcomes; requiring that the Department of Juvenile Justice, in collaboration with the Department of Education and in consultation with other entities, prepare and submit an annual report to the Governor and the Legislature by a specified date; amending s. 985.721, F.S.; conforming a cross-reference; amending s. 1001.42, F.S.; conforming provisions to changes made by the act; conforming a cross-reference; amending ss. 1002.20 and 1002.45, F.S.; conforming



773988

cross-references; amending s. 1003.01, F.S.; revising the term "juvenile justice education programs or schools" to conform to changes made by the act; creating s. 1003.515, F.S.; providing a short title; providing a legislative finding; providing purposes of the Florida Juvenile Justice Education Act; providing a definition for the term "juvenile justice education programs"; providing responsibilities for school districts and private providers contracted by school districts to offer education services to youth in juvenile justice education programs; requiring that each juvenile justice residential and nonresidential program involve the regional workforce board or economic development agency and local postsecondary institutions to determine the occupational areas for the education and workforce-related program; providing requirements for education and workforce-related services in juvenile justice programs; providing responsibilities for the Department of Education; requiring that the department identify each juvenile justice residential and nonresidential education program, excluding detention programs, by performance ratings; providing criteria for determining performance ratings; requiring that the department make available a common student pre- and post-assessment to measure the academic progress in reading and mathematics of youth in juvenile justice education programs; requiring that juvenile justice residential and nonresidential education programs, excluding



773988

detention centers, be held accountable for student performance outcomes for a specified period after youth are released from the programs; providing for program accountability; requiring that the department monitor the education performance of youth, prohibit certain school district or private providers, under specified circumstances, from delivering education services, and verify that a school district is operating or contracting to deliver education services; providing for a school district's responsibilities; requiring that a youth who exits the program attain an industry certification, enroll in a program to complete the industry certification, be gainfully employed, or enroll in and continue his or her education based on a transition plan; requiring that an education transition plan component be incorporated in a youth's transition plan; requiring that each juvenile justice education program develop the education transition plan component during the course of the youth's stay in a juvenile justice residential or nonresidential program; providing funding requirements for the juvenile justice education programs; prohibiting a district school board from being charged rent, maintenance, utilities, or overhead on facilities; requiring that the Department of Juvenile Justice provide maintenance, repairs, and remodeling of existing facilities; requiring that the State Board of Education collaborate with the Department of Juvenile Justice,



773988

the Department of Economic Opportunity, school districts, and private providers to adopt rules; repealing s. 1003.52, F.S., relating to educational services in Department of Juvenile Justice programs; amending s. 1009.25, F.S.; providing an exemption from the payment of postsecondary education fees and tuition for certain youth who are ordered by a court to participate in a juvenile justice residential program; amending s. 1011.62, F.S.; extending dates relating to the funding of students who are enrolled in juvenile justice education programs or in education programs for juveniles placed in secure facilities; conforming a cross-reference; providing an effective date.

By the Committees on Education Pre-K - 12; and Education Pre-K -
12

581-01539-12

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1 A bill to be entitled
2 An act relating to juvenile justice education and
3 workforce programs; amending s. 985.46, F.S.;
4 requiring that each juvenile committed to a juvenile
5 justice commitment program have a transition plan upon
6 release; requiring that the transition plan include an
7 education transition plan component and information
8 regarding delinquency treatment and intervention
9 services that are accessible upon exiting the program;
10 amending s. 985.618, F.S.; providing legislative
11 intent regarding juvenile justice education and
12 workforce-related programs; requiring that the
13 Department of Juvenile Justice verify that each
14 juvenile justice education program meets specified
15 minimum standards; requiring that the effectiveness of
16 the programs be determined by implementing systematic
17 data collection, data analysis, and evaluations;
18 requiring that the programs be evaluated based on
19 student performance outcomes; providing duties for the
20 department; requiring that an annual report be
21 submitted to the Governor and the Legislature by a
22 specified date; requiring that the department
23 collaborate with certain entities to adopt rules;
24 amending ss. 985.632 and 1001.42, F.S.; conforming
25 provisions to changes made by the act; conforming
26 cross-references; amending ss. 1002.20 and 1002.45,
27 F.S.; conforming cross-references; creating s.
28 1003.515, F.S.; providing a short title; providing
29 purposes of the Florida Juvenile Justice Education

581-01539-12

2012834c1

30 Act; providing responsibilities for school districts
31 and private providers contracted by school districts
32 to offer education services to youth in juvenile
33 justice education programs; requiring that each
34 juvenile justice education program involve the
35 regional workforce board or economic development
36 agency and local postsecondary institutions to
37 determine the occupational areas for the education and
38 workforce-related program; providing requirements for
39 education and workforce-related services in juvenile
40 justice programs; providing responsibilities for the
41 Department of Education; requiring that the department
42 identify school districts and private providers by
43 performance ratings; providing criteria for
44 determining performance ratings; requiring that the
45 department make available a common student assessment
46 to measure the academic progress in reading and
47 mathematics of youth in juvenile justice education
48 programs; requiring that school districts and private
49 providers be held accountable for student performance
50 outcomes; providing for program accountability;
51 requiring that a youth who exits the program attain an
52 industry certification, enroll in a program to
53 complete the industry certification, or enroll in and
54 continue his or her education based on a transition
55 plan; requiring that an education transition plan
56 component be incorporated in a youth's transition
57 plan; requiring that each school district and private
58 provider develop the education transition plan

581-01539-12

2012834c1

component during the course of the youth's stay in a juvenile justice program; providing funding requirements for the juvenile justice education programs; prohibiting a district school board from being charged rent, maintenance, utilities, or overhead on facilities; requiring that the Department of Juvenile Justice provide maintenance, repairs, and remodeling of existing facilities; requiring that the State Board of Education collaborate with the Department of Juvenile Justice, the Department of Economic Opportunity, school districts, and private providers to adopt rules; repealing s. 1003.52, F.S., relating to educational services in Department of Juvenile Justice programs; amending s. 1011.62, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (6) is added to section 985.46, Florida Statutes, to read:

985.46 Conditional release.—

(6) Each juvenile committed to a commitment program shall have a transition plan upon release. Transition planning shall begin for each juvenile upon placement in a commitment program and shall result in an individual transition plan for each youth before he or she is released. The transition plan shall be developed with the participation of the youth, representatives of the commitment program, school district personnel, and

581-01539-12

2012834c1

representatives of conditional release or postcommitment probation programs, if appropriate. The transition plan shall include an education transition plan component as provided in s. 1003.515(9), as well as information regarding pertinent delinquency treatment and intervention services that are accessible upon exiting the program.

(a) For a juvenile who is released on conditional release or postcommitment probation status, the transition plan shall be incorporated into the conditions of release.

(b) For a juvenile who is not released on conditional release or postcommitment probation status, the transition plan shall be explained to the youth and provided upon release, with all necessary referrals having been made at least 30 days before the youth exits the program.

(c) For a juvenile who participates in a day treatment program, the transition plan shall be explained to the youth and provided upon release. For a juvenile who participates in a day treatment program and who is released on conditional release or postcommitment probation status, the transition plan shall be incorporated into the conditions of release.

Section 2. Section 985.618, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 985.618, F.S., for present text.)

985.618 Education and workforce-related programs.—

(1) The Legislature intends for youth in juvenile justice programs to be provided a quality education that includes workforce-related skills that lead to continuing education or meaningful employment, or both, and that results in reduced

581-01539-12 2012834c1

117 rates of recidivism.

118 (2) The department shall verify that each juvenile justice
119 education program, at a minimum:

120 (a) Uses virtual course offerings that maximize learning
121 opportunities for adjudicated youth.

122 (b) Uses virtual counseling to address the educational and
123 workforce needs of adjudicated youth.

124 (c) Provides instruction from individuals who hold industry
125 credentials in the occupational area in which they teach.

126 (d) Provides instruction during evenings and weekends.

127 (e) Considers, before placement, the age, interests, prior
128 education, training, work experience, emotional and mental
129 abilities, and physical capabilities of the youth and the
130 duration of the term of placement imposed.

131 (f) Expends funds in a manner that directly supports the
132 attainment of successful student outcomes as specified in s.
133 1003.515(6) and that allows youth to engage in real work
134 situations whenever possible.

135 (3) (a) Program effectiveness shall be determined by
136 implementing systematic data collection, data analysis, and
137 education and workforce-related program evaluations pursuant to
138 ss. 985.632 and 1003.515.

139 (b) The evaluation of juvenile justice education and
140 workforce-related programs shall be based on the performance
141 outcomes provided in s. 1003.515(6).

142 (4) The department shall:

143 (a) Monitor the education performance of youth in juvenile
144 justice facilities.

145 (b) Prohibit school districts or private providers that

581-01539-12 2012834c1

146 have failing performance ratings from delivering the education
147 services as provided in s. 1003.515(7).

148 (c) Verify that a school district enters into a contract
149 with a high-performing school district or provider pursuant to
150 s. 1003.515(7) to deliver education services.

151 (5) The department, in collaboration with the Department of
152 Education and in consultation with the school districts and
153 private juvenile justice education program providers, shall
154 prepare an annual report containing the education performance
155 outcomes, based on the criteria in s. 1003.515(6), of youth in
156 juvenile justice education programs. The report shall delineate
157 the performance outcomes of youth in the state, in each school
158 district, and by each private provider, including the
159 performance outcomes of all major student populations and
160 genders, as determined by the Department of Juvenile Justice.
161 The report shall address the use and successful completion of
162 virtual instruction courses and the successful implementation of
163 transition and reintegration plans. The report must include an
164 analysis of the performance of youth over time, including, but
165 not limited to, additional education attainment, employment,
166 earnings, industry certification, and rates of recidivism. The
167 report must also include recommendations for improving
168 performance outcomes and for additional cost savings and
169 efficiencies. The report shall be submitted to the Governor, the
170 President of the Senate, and the Speaker of the House of
171 Representatives by December 31, 2013, and each year thereafter.

172 (6) The department shall collaborate with the Department of
173 Education, the Department of Economic Opportunity, school
174 districts, and private providers to adopt rules to administer

581-01539-12 2012834c1

this section.

Section 3. Subsection (3) of section 985.632, Florida Statutes, is amended to read:

985.632 Quality assurance and cost-effectiveness.—

(3) The department shall annually collect and report cost data for every program operated by the department or its contracted provider ~~or contracted by the department~~. The cost data shall conform to a format approved by the department and the Legislature. Uniform cost data shall be reported and collected for each education program operated by a school district or private provider contracted by a school district ~~state-operated and contracted programs~~ so that comparisons can be made among programs. The Department of Education shall ensure that there is accurate cost accounting for education programs operated by school districts and private providers, ~~state-operated services~~ including market-equivalent rent and other shared costs ~~cost~~. The cost of the education educational program ~~provided to a residential facility~~ shall be reported and included in the cost of a program. The Department of Education shall submit an annual cost data report ~~report~~ to the department ~~President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year. The annual cost data shall be included in the annual report required under s. 985.618(5).~~ Cost-benefit analysis for juvenile justice education educational programs shall ~~will~~ be developed and implemented in collaboration with and in cooperation with the Department of

581-01539-12 2012834c1

Education, local providers, and local school districts. ~~Cost data for the report shall include data collected by the Department of Education for the purposes of preparing the annual report required by s. 1003.52(19).~~

Section 4. Paragraph (b) of subsection (18) of section 1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—Maintain a state system of school improvement and education accountability as provided by statute and State Board of Education rule. This system of school improvement and education accountability shall be consistent with, and implemented through, the district's continuing system of planning and budgeting required by this section and ss. 1008.385, 1010.01, and 1011.01. This system of school improvement and education accountability shall comply with the provisions of ss. 1008.33, 1008.34, 1008.345, and 1008.385 and include the following:

(b) *Public disclosure.*—The district school board shall provide information regarding the performance of students in and education educational programs as required pursuant to ss. 1008.22 and 1008.385 and implement a system of school reports as required by statute and State Board of Education rule which shall include schools operating for the purpose of providing education educational services to youth in juvenile justice education ~~Department of Juvenile Justice~~ programs, and for those programs schools, report on the data and education outcomes ~~elements~~ specified in s. 1003.515(6) ~~1003.52(19)~~. Annual public

581-01539-12 2012834c1

disclosure reports shall be in an easy-to-read report card format and shall include the school's grade, high school graduation rate calculated without GED tests, disaggregated by student ethnicity, and performance data as specified in state board rule.

Section 5. Subsection (20) of section 1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(20) JUVENILE JUSTICE PROGRAMS.—Students who are in juvenile justice programs have the right to receive educational programs and services in accordance with the provisions of s. 1003.515 ~~1003.52~~.

Section 6. Paragraph (b) of subsection (1) of section 1002.45, Florida Statutes, is amended to read:

1002.45 Virtual instruction programs.—

(1) PROGRAM.—

(b) Each school district that is eligible for the sparsity supplement pursuant to s. 1011.62(7) shall provide all enrolled public school students within its boundaries the option of participating in part-time and full-time virtual instruction programs. Each school district that is not eligible for the sparsity supplement shall provide at least three options for part-time and full-time virtual instruction. All school districts must provide parents with timely written notification

581-01539-12 2012834c1

of an open enrollment period for full-time students of at least 90 days that ends no later than 30 days prior to the first day of the school year. The purpose of the program is to make quality virtual instruction available to students using online and distance learning technology in the nontraditional classroom. A school district virtual instruction program shall provide the following:

1. Full-time virtual instruction for students enrolled in kindergarten through grade 12.

2. Part-time virtual instruction for students enrolled in grades 9 through 12 courses that are measured pursuant to subparagraph (8)(a)2.

3. Full-time or part-time virtual instruction for students enrolled in dropout prevention and academic intervention programs under s. 1003.53, Department of Juvenile Justice education programs under s. 1003.515 ~~1003.52~~, core-curricula courses to meet class size requirements under s. 1003.03, or Florida College System institutions under this section.

Section 7. Section 1003.515, Florida Statutes, is created to read:

1003.515 The Florida Juvenile Justice Education Act.—

(1) SHORT TITLE.—This section may be cited as the "Florida Juvenile Justice Education Act."

(2) LEGISLATIVE FINDING.—The Legislature finds that an education is the single most important factor in the rehabilitation of adjudicated youth who are in Department of Juvenile Justice programs.

(3) PURPOSES.—The purposes of this section are to:

(a) Provide performance-based outcome measures and

581-01539-12 2012834c1

291 accountability for juvenile justice education programs; and

292 (b) Improve academic and workforce-related outcomes so that
 293 adjudicated and at-risk youth may successfully complete the
 294 transition to and reenter the academic and workforce
 295 environments.

296 (4) SCHOOL DISTRICT AND CONTRACTED EDUCATION PROVIDER
 297 RESPONSIBILITIES.—

298 (a) A school district or private provider contracted by a
 299 school district to offer education services to youth in a
 300 juvenile justice education program shall:

301 1. Provide rigorous and relevant academic and workforce-
 302 related curricula that will lead to industry certifications in
 303 an occupational area of high demand identified in the Industry
 304 Certification Funding list adopted by the State Board of
 305 Education, or articulate to secondary or postsecondary-level
 306 coursework, as appropriate.

307 2. Support state, local, and regional economic development
 308 demands.

309 3. Make high-wage and high-demand careers more accessible
 310 to adjudicated and at-risk youth.

311 4. Reduce rates of recidivism for adjudicated youth.

312 5. Provide access to the appropriate courses and
 313 instruction to prepare youth for a standard high school diploma
 314 or the GED examination, as appropriate.

315 6. Provide access to virtual education courses that are
 316 appropriate to meet the requirements of academic or workforce-
 317 related programs and the requirements for continuing education
 318 specified in the youth's transition and postrelease plans.

319 7. Provide opportunities for earning credits toward high

581-01539-12 2012834c1

320 school graduation or credits that articulate to postsecondary
 321 education institutions while the youth are in residential and
 322 nonresidential juvenile justice facilities.

323 8. Ensure that the credits and partial credits earned by
 324 youth are transferred and included in the youth's records as
 325 part of the transition plan.

326 9. Ensure that the education program consists of the
 327 appropriate academic, workforce-related, or exceptional
 328 education curricula and related services that directly support
 329 performance outcomes, which must be specified in each youth's
 330 transition plan as required by subsection (9).

331 10. If the duration of a youth's stay in a program is less
 332 than 40 days, ensure that the youth continues his or her
 333 education or workforce-related training that leads to industry
 334 certification in an occupational area of high demand.

335 11. Maintain an academic record for each youth who is
 336 enrolled in a juvenile justice facility, as required by s.
 337 1003.51, and ensure that the coursework, credits, partial
 338 credits, occupational completion points, and industry
 339 certifications earned by the youth are transferred and included
 340 in the youth's transition plan pursuant to s. 985.46.

341 (b) Each school district and private provider shall ensure
 342 that the following youth participate in the program:

343 1. Youth who are of compulsory school attendance age
 344 pursuant to s. 1003.21.

345 2. Youth who are not of compulsory school attendance age
 346 and who have not received a high school diploma or its
 347 equivalent, if the youth is in a juvenile justice facility. Such
 348 youth must participate in a workforce-related education program

581-01539-12 2012834c1

that leads to industry certification in an occupational area of high demand or job placement earning full-time wages.

3. Youth who have attained a high school diploma or its equivalent and who are not employed. Such youth must participate in a workforce-related education program that leads to industry certification in an occupational area of high demand or gainful employment earning full-time wages.

(5) PROGRAM REQUIREMENTS.—In compliance with the strategic 5-year plan under s. 1003.491, each juvenile justice education program shall, in collaboration with the regional workforce board or economic development agency and local postsecondary institutions, determine the appropriate occupational areas for the program. Juvenile justice education programs must:

(a) Ensure that rigorous academic and workforce-related coursework is offered and meets or exceeds appropriate state-approved subject area standards, and results in the attainment of industry certification and postsecondary credit, when appropriate;

(b) Ensure workforce-related instruction by industry-certified faculty;

(c) Maximize the use of private sector personnel;

(d) Use strategies to maximize the delivery of virtual instruction;

(e) Maximize instructional efficiency for youth in juvenile justice facilities;

(f) Provide opportunities for youth to earn weighted or dual enrollment credit for higher-level courses, when appropriate;

(g) Promote credit recovery; and

581-01539-12 2012834c1

(h) Provide instruction that results in competency, certification, or credentials in workplace skills, including, but not limited to, communication skills, interpersonal skills, decisionmaking skills, work ethic, and the importance of attendance and timeliness in the work environment.

(6) DEPARTMENT RESPONSIBILITIES.—

(a) The Department of Education shall identify school districts and private providers as having one of the following performance ratings as defined by State Board of Education rule:

1. High performance.

2. Adequate performance.

3. Failing performance.

(b) The department shall consider the level of rigor associated with the attainment of a particular outcome when assigning weight to the outcome. The department shall use the following criteria in determining a school district's or private provider's performance rating:

1. One or more of the following outcomes for a youth who is middle school age or younger:

a. Attaining an industry certification in an occupational area of high demand identified in the Industry Certification Funding list adopted by the State Board of Education, if available and appropriate, and participating in continuing education upon release from a juvenile justice facility.

b. Attaining occupational completion points in an occupational area of high demand identified in the Industry Certification Funding list adopted by the State Board of Education and participating in continuing education upon release from a juvenile justice facility.

581-01539-12

2012834c1

c. Completing secondary coursework and participating in continuing education upon release from a juvenile justice facility.

d. Achieving academic progress in reading and mathematics, as measured by the statewide common assessment adopted by the department for use in juvenile justice education programs, and participating in continuing education upon release from a juvenile justice facility.

2. One or more of the following outcomes for a youth who is high school age:

a. Achieving academic progress in reading and mathematics, as measured by the statewide common assessment adopted by the department for use in juvenile justice education programs, and participating in continuing education upon release from a juvenile justice facility.

b. Earning secondary or postsecondary credit upon release from a juvenile justice facility and participating in continuing education upon release from a juvenile justice facility.

c. Attaining a high school diploma or its equivalent and participating in continuing education at the postsecondary level upon release from a juvenile justice facility.

d. Attaining a high school diploma or its equivalent and obtaining job placement or self-employment in a position earning full-time wages.

e. Attaining an industry certification in an occupational area of high demand identified in the Industry Certification Funding list adopted by the State Board of Education and attaining job placement or self-employment earning full-time wages in a position for which the student attained an industry

581-01539-12

2012834c1

certification.

f. Attaining occupational completion points in an occupational area of high demand identified in the Industry Certification Funding list adopted by the State Board of Education and job placement or self-employment in a position earning full-time wages.

g. Attaining occupational completion points in an occupational area of high demand identified in the Industry Certification Funding list adopted by the State Board of Education and participation in continuing education in order to complete the industry certification in that occupation.

(c) By September 1, 2012, the department shall make available a common student assessment to measure the academic progress in reading and mathematics of youth who are assigned to juvenile justice education programs.

For purposes of performance ratings, school districts and private providers shall be held accountable for the performance outcomes of youth until they are released from supervision by the Department of Juvenile Justice. This subsection does not abrogate the provisions of s. 1002.22 which relate to education records or the requirements of 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act.

(7) PROGRAM ACCOUNTABILITY.—

(a) If a school district or private provider earns two consecutive failing performance ratings or two failing performance ratings in any 3-year period, as provided in subsection (6), the school district shall enter into a contract with a school district or private provider that has a high-

581-01539-12 2012834c1

performance rating to deliver the education services to the youth in the program. The Department of Juvenile Justice may use its statutory authority to sanction or prohibit a private provider from delivering education services to youth under the department's supervision due to noneducation reasons.

(b) Except as provided in paragraph (a), the school district of the county in which the residential or nonresidential care facility or juvenile assessment facility is located shall deliver education services to youth in Department of Juvenile Justice programs. A school district may enter into a contract with a private provider to deliver the education services in lieu of directly providing the education services. The contract shall include performance criteria as provided in subsection (6).

(c) When determining educational placement for youth who enroll in a school district upon release, the school district must consult with the lead educator of the juvenile justice program to which the youth was last assigned and adhere to the transition plan established under s. 985.46(6).

(d) If a private provider under contract with a school district maintains a high-performance rating pursuant to subsection (6), the school district may not require a private provider to use the school district's personnel or require qualifications of private provider personnel beyond those that are necessary to protect the health, safety, and welfare of the students, as determined by the Department of Juvenile Justice.

(e) Each school district must provide juvenile justice education programs access to substitute classroom teachers used by the school district.

581-01539-12 2012834c1

(8) EXITING PROGRAM.—Upon exiting a program, a youth must:

(a) Attain an industry certification in an occupational area of high demand identified in the Industry Certification Funding list adopted by the State Board of Education;

(b) Enroll in a program to complete the industry certification;

(c) Be gainfully employed and earning full-time wages; or

(d) Enroll in and continue his or her education based on the transition and postrelease plan provided in s. 958.46.

(9) EDUCATION TRANSITION PLAN COMPONENT.—

(a) The education transition plan component shall be incorporated in the transition plan pursuant to s. 985.46(6).

(b) Each school district and private provider must develop an education transition plan component during the course of a youth's stay in a juvenile justice program which coordinates academic and workforce services and assists the youth in successful community reintegration upon the youth's release.

(c) The development of the education transition plan component shall begin upon a youth's placement in the program. The education transition plan component must include the academic and workforce services to be provided during the program stay and the establishment of services to be implemented upon release. The appropriate personnel in the juvenile justice education program, members of the community, the youth, and the youth's family, when appropriate, shall collaborate to develop the education transition plan component.

(d) Education planning for reintegration shall begin when placement decisions are made and continue throughout the youth's stay in order to provide for continuing education, job

581-01539-12 2012834c1

523 placement, and other necessary services. Individuals who are
 524 responsible for reintegration shall coordinate activities to
 525 ensure that the education transition plan component is
 526 successfully implemented and a youth is provided access to
 527 support services that will sustain the youth's success once he
 528 or she is no longer under the supervision of the Department of
 529 Juvenile Justice. The education transition plan component must
 530 provide for continuing education, workforce development, or
 531 meaningful job placement pursuant to the performance outcomes in
 532 subsection (6). For purposes of this section, the term
 533 "reintegration" means the process by which a youth returns to
 534 the community following release from a juvenile justice program.

535 (10) FUNDING.—

536 (a) Youth who are participating in GED preparation programs
 537 while under the supervision of the Department of Juvenile
 538 Justice shall be funded at the basic program cost factor for
 539 juvenile justice programs in the Florida Education Finance
 540 Program (FEFP). Juvenile justice education programs shall be
 541 funded in the appropriate FEFP program based on the education
 542 services needed by the students in the programs pursuant to s.
 543 1011.62.

544 (b) Juvenile justice education programs operated through a
 545 contract with the Department of Juvenile Justice and under the
 546 purview of the department's quality assurance standards and
 547 performance outcomes shall receive the appropriate FEFP funding
 548 for juvenile justice programs.

549 (c) A district school board shall fund the education
 550 program in a juvenile justice facility at the same or higher
 551 level of funding for equivalent students in the district school

581-01539-12 2012834c1

552 system based on the funds generated through the FEFP and funds
 553 allocated from federal programs.

554 (d) Consistent with the rules of the State Board of
 555 Education, district school boards shall request an alternative
 556 full-time equivalent (FTE) survey for juvenile justice programs
 557 experiencing fluctuations in student enrollment.

558 (e) The State Board of Education shall prescribe rules
 559 relating to FTE count periods which must be the same for
 560 juvenile justice programs and other public school programs. The
 561 summer school period for students in juvenile justice programs
 562 shall begin on the day immediately preceding the subsequent
 563 regular school year. Students may be funded for no more than 25
 564 hours per week of direct instruction; however, students shall be
 565 provided access to virtual instruction in order to maximize the
 566 most efficient use of time.

567 (11) FACILITIES.—The district school board may not be
 568 charged any rent, maintenance, utilities, or overhead on the
 569 facilities. Maintenance, repairs, and remodeling of existing
 570 facilities shall be provided by the Department of Juvenile
 571 Justice.

572 (12) RULEMAKING.—The State Board of Education shall
 573 collaborate with the Department of Juvenile Justice, the
 574 Department of Economic Opportunity, school districts, and
 575 private providers to adopt rules pursuant to ss. 120.536(1) and
 576 120.54 to administer this section.

577 Section 8. Section 1003.52, Florida Statutes, is repealed.

578 Section 9. Paragraph (f) of subsection (1) of section
 579 1011.62, Florida Statutes, is amended to read:

580 1011.62 Funds for operation of schools.—If the annual

581-01539-12 2012834c1

581 allocation from the Florida Education Finance Program to each
 582 district for operation of schools is not determined in the
 583 annual appropriations act or the substantive bill implementing
 584 the annual appropriations act, it shall be determined as
 585 follows:

586 (1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR
 587 OPERATION.—The following procedure shall be followed in
 588 determining the annual allocation to each district for
 589 operation:

590 (f) *Supplemental academic instruction; categorical fund.*—

591 1. There is created a categorical fund to provide
 592 supplemental academic instruction to students in kindergarten
 593 through grade 12. This paragraph may be cited as the
 594 "Supplemental Academic Instruction Categorical Fund."

595 2. Categorical funds for supplemental academic instruction
 596 shall be allocated annually to each school district in the
 597 amount provided in the General Appropriations Act. These funds
 598 shall be in addition to the funds appropriated on the basis of
 599 FTE student membership in the Florida Education Finance Program
 600 and shall be included in the total potential funds of each
 601 district. These funds shall be used to provide supplemental
 602 academic instruction to students enrolled in the K-12 program.
 603 Supplemental instruction strategies may include, but are not
 604 limited to: modified curriculum, reading instruction, after-
 605 school instruction, tutoring, mentoring, class size reduction,
 606 extended school year, intensive skills development in summer
 607 school, and other methods for improving student achievement.
 608 Supplemental instruction may be provided to a student in any
 609 manner and at any time during or beyond the regular 180-day term

581-01539-12 2012834c1

610 identified by the school as being the most effective and
 611 efficient way to best help that student progress from grade to
 612 grade and to graduate.

613 3. Effective with the 1999-2000 fiscal year, funding on the
 614 basis of FTE membership beyond the 180-day regular term shall be
 615 provided in the FEFP only for students enrolled in juvenile
 616 justice education programs or in education programs for
 617 juveniles placed in secure facilities or programs under s.
 618 985.19. Funding for instruction beyond the regular 180-day
 619 school year for all other K-12 students shall be provided
 620 through the supplemental academic instruction categorical fund
 621 and other state, federal, and local fund sources with ample
 622 flexibility for schools to provide supplemental instruction to
 623 assist students in progressing from grade to grade and
 624 graduating.

625 4. The Florida State University School, as a lab school, is
 626 authorized to expend from its FEFP or Lottery Enhancement Trust
 627 Fund allocation the cost to the student of remediation in
 628 reading, writing, or mathematics for any graduate who requires
 629 remediation at a postsecondary educational institution.

630 5. ~~Beginning in the 1999-2000 school year,~~ Dropout
 631 prevention programs as defined in ss. 1003.515 ~~1003.52~~,
 632 1003.53(1)(a), (b), and (c), and 1003.54 shall be included in
 633 group 1 programs under subparagraph (d)3.

634 Section 10. This act shall take effect upon becoming a law.

Information Only
THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/12
Meeting Date

Info Only

Topic SB 834 - Amendment

Bill Number 834 - Amendment
(if applicable)

Name Joan Wimmer

Amendment Barcode _____
(if applicable)

Job Title DJS Education Director

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Speaking: ☐ For ☐ Against ☒ Information

Representing _____

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)

2/9/12
Meeting Date

Topic JJ EDUCATION

Bill Number SB 834
(if applicable)

Name VICKI LUKIS

Amendment Barcode _____
(if applicable)

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Address 836 MADRID ST

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Speaking: ☒ For ☐ Against ☒ Information

Representing SENATE JUVENILE JUSTICE EDUCATION WORKGROUP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 864

INTRODUCER: Senator Altman

SUBJECT: Driving Under the Influence

DATE: February 2, 2012

REVISED: 02/08/12

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

I. Summary:

Ignition Interlock Devices

This bill amends s. 316.193(6), F. S., to allow the court to order the installation of an ignition interlock device in lieu of ordering the impoundment or immobilization of the vehicle that was operated by or in the actual control of a defendant convicted of driving under the influence of alcohol or drugs to the extent normal faculties are impaired (DUI).

If the court elects to order an ignition interlock device installation, the installation time requirements will vary depending on the offender's previous DUI convictions. The bill provides the following installation time periods:

- at least three continuous months for a first DUI conviction;
- at least six continuous months for a second DUI conviction occurring within five years after the date of a prior DUI conviction; or
- at least twelve continuous months for a third or subsequent DUI conviction occurring within ten years after the date of a prior DUI conviction.

Administrative Suspension

This bill also amends several sections of law relating to DUI suspensions, administered by the Department of Highway Safety and Motor Vehicles (DHSMV). With respect to roadside DUI license suspensions, the bill requires a law enforcement officer to issue a notice to appear in addition to a notice of suspension. The notice to appear requires a driver to personally appear at a designated office of the DHSMV. The bill provides that if the driver waives his or her right to a formal review of the DUI suspension, the DHSMV shall reinstate the person's driving privilege

(although the license is still restricted), and shall waive the suspension requirement contained in current law. A driver will still be able to request an informal review in addition to obtaining a restricted license. The DHSMV is authorized to extend the time for a person to apply for a restricted license under certain circumstances and must notify drivers who fail to appear in writing to alert them to their right to review the suspension.

Under the bill, a driver who appears at a DHSMV office and does not apply for a restricted license retains his or her right to a formal review, as is the case under current law. The bill authorizes a hearing officer to receive testimony for a review telephonically and authorizes law enforcement agencies to submit materials related to the arrest to the DHSMV by electronic format.

The bill provides that, if a subpoenaed person does not appear at a formal hearing, the party seeking enforcement of such subpoena may do so by filing a motion for enforcement in the criminal court case (if any) resulting from the incident that gave rise to the suspension. The bill provides that the DHSMV is not a party to the subpoena action. The bill prohibits a hearing officer from considering the lawfulness of the arrest during a formal review, and authorizes witnesses to appear telephonically at a formal review hearing. With respect to telephonic hearings, the bill requires a law enforcement agency seeking certiorari review to file the petition in the circuit court in the county where the law enforcement agency is located.

The bill also clarifies commercial driver license disqualifications, convictions, administrative suspensions and hardship licenses, and it changes eligibility periods and ignition interlock device requirements for a hardship license.

This bill substantially amends the following sections of the Florida Statutes: 316.193, 322.2615, 322.2616, 322.2715, and 322.64.

II. Present Situation:

Ignition Interlock Devices/Impoundment or Immobilization

Section 316.193(2), F.S., requires a judge to order the installation of an ignition interlock device on all vehicles leased or owned and routinely operated by a second-time DUI offender for at least one year, provided the offender qualifies for a permanent or restricted license. A third conviction requires mandatory ignition interlock device installation on all vehicles leased or owned and routinely operated by the offender for at least two years, provided the offender qualifies for a permanent or restricted license.

However, if a first-time offender's BAC is 0.15 or higher or if a passenger under eighteen years of age is present in the vehicle, the mandatory ignition interlock installation on all vehicles leased or owned and routinely operated by the offender is for at least six continuous months, provided the offender qualifies for a permanent or restricted license. If a second-time offender's BAC is 0.15 or higher or if a passenger under the age of eighteen is present in the vehicle, the mandatory ignition interlock device installation on all vehicles leased or owned and routinely operated by the offender is for at least two continuous years, provided the offender qualifies for a permanent or restricted license.

Section 316.1937, F.S., authorizes the court to require the installation of a certified ignition interlock device for at least six continuous months, with exceptions provided for those required to drive within the scope of employment.¹ This authorization is in addition to any other authorized penalties, including the current mandatory installation of an ignition interlock device for second and third-time offenders. Although a DUI offender pays for installation, maintenance and monitoring of the ignition interlock device, Florida law contains provisions for those the court determines are unable to pay. For example, the court may order that any portion of a fine paid by the person for a DUI violation be allocated to defray installation costs.

The following acts are prohibited under s. 316.1937, F.S.:

- tampering with or circumventing the operation of an ignition interlock device;
- requesting or soliciting another person to blow into an ignition interlock device for the purpose of starting or operating the motor vehicle;
- blowing into an ignition interlock device for the purpose of starting or operating the motor vehicle for another; and
- knowingly leasing or lending a motor vehicle to a person who has been required to have an ignition interlock device installed on his or her motor vehicle.

A violation of this section results in a one year license suspension. A separate violation of this section during the same period of ignition interlock device installation results in a five year license suspension. If a person commits any of these prohibited acts and is not a licensed driver, he or she is subject to a fine between \$250 and \$500 for each violation.

Section 316.193(6), F.S., requires a judge to order the impoundment or immobilization of a vehicle that the defendant was operating or in the actual control of at the time of a DUI arrest. The impoundment period increases with the number of DUI convictions: a first conviction requires an impoundment/immobilization for ten days, a second conviction requires impoundment/immobilization for 30 days, and a third or subsequent conviction requires impoundment/immobilization for 90 days. The impoundment must not coincide with any incarceration of the offender.

Section 322.28, F.S., provides time periods for driver license revocation upon a DUI conviction. After a first conviction, the court must revoke the offender's license for a period of six months to one year. After a second conviction within five years of a first DUI conviction, the court must revoke the offender's driver license for a period not less than five years. A third conviction within ten years after the date of a prior DUI conviction results in a revocation of not less than ten years.

Currently, s. 322.2715, F.S., does not allow the DHSMV to substitute the installation of an ignition interlock device in lieu of imposing the revocation periods set forth in s. 322.28, F.S.

¹ Section 316.1938, F.S., requires the DHSMV to certify, or cause to be certified, the accuracy and precision of the breath-testing component of ignition interlock devices.

Administrative Suspension

Sections 322.2615, 322.2616 and 322.64, F.S., specify certain administrative sanctions that are issued to a driver who refuses to take a breath, blood or urine test or who has a breath or blood alcohol level of .08 or higher.

Section 322.2615, F.S., the administrative suspension law, provides that a law enforcement officer must notify the driver at roadside of the administrative suspension of his or her driver's license as a result of a DUI arrest. The officer must issue an unrestricted ten day temporary permit (if eligible), and provide the driver with information regarding the opportunity to challenge the suspension. The driver has ten days to apply in person or by mail for the formal or informal review of their license suspension in the judicial circuit where they live or where the offense occurred. Upon application for a formal review, the driver is issued a temporary driving permit restricted to "business purposes only," which expires 12 days after the scheduled formal review.

If the suspension is upheld by the hearing officer, the driver must serve a period of 30 days during which no driving is permitted. If the offense is for a blood or breath alcohol level of .08 or higher, or refusal to take a breath, blood, or urine test, the suspension period is 90 days. A driver is not eligible to obtain a hardship license until they have served the mandatory suspension time.

If the driver does not request a review within the required ten day period from the date of arrest, the suspension is automatically sustained and the time period begins. After the expiration of the suspension time, the driver may apply for a hearing to determine if a hardship license will be issued. Under certain circumstances a review will be granted after the ten day period with an affidavit of just cause explaining why the driver did not timely apply for a review.

During a formal hearing, a hearing officer is authorized to administer oaths, examine witnesses, take testimony, receive relevant evidence, issue subpoenas and make a ruling on the suspension. As a result of the Florida Supreme Court decision in *DHSMV v. Hernandez, McLaughlin*, 36 Fla. L. Weekly S243a (Fla. June 9, 2011), the hearing officer must determine the lawfulness of the arrest for a violation of s. 316.193, F.S. If a witness is subpoenaed by the driver and fails to appear at the formal review, the driver has the option to enforce the subpoena through the circuit court to ensure the appearance of the witness.

Currently, if drivers request an informal review, they may submit materials to the DHSMV for review. The hearing officer reviews the paperwork submitted by the law enforcement agency and any of the documents submitted by the driver. No testimony is taken.

The previously discussed administrative procedures also apply to s. 322.2616, F.S., the "zero tolerance" law that governs persons under 21 years of age, and they apply to s. 322.64, F.S., relating to commercial driver license administrative disqualifications.

III. Effect of Proposed Changes:

Ignition Interlock Devices

This bill amends s. 316.193(6), F.S., to allow the court to order the installation of the ignition interlock device in lieu of ordering the impoundment or immobilization of the vehicle that was operated by or in actual control of a defendant convicted of DUI.

If the court elects to order an ignition interlock device installation, the installation time requirements will vary depending on the offender's previous convictions. The bill provides the following installation time periods:

- at least three continuous months for a first DUI conviction;
- at least six continuous months for a second DUI conviction that occurs within five years after the date of a prior DUI conviction; or
- at least twelve continuous months for a third or subsequent DUI conviction that occurs within ten years after the date of a prior DUI conviction.

So, if the court orders the installation of an ignition interlock device, it will be in addition to any penalty currently available to be imposed under s. 316.193, F.S., which has the practical effect of lengthening the minimum ignition interlock device time requirements for all second and third-time DUI offenders. For example, a second-time DUI offender under the bill will be required to comply with the currently required ignition interlock device installation of 12 months, plus the bill's new mandate of at least six months (18 months total); and a third or subsequent time DUI offender will have to comply with the currently required 24 months, plus the bill's new mandate of at least 12 months (36 months total).

Administrative Suspension

This bill also amends ss. 322.2615, 322.2616, 322.64, 322.2715, F.S., relating to DUI suspensions, administered by the DHSMV. With respect to roadside DUI license suspensions, the bill requires a law enforcement officer to issue a notice to appear in addition to a notice of suspension. The notice to appear requires a driver to personally appear at a designated office of the DHSMV. The bill provides that if the driver waives his or her right to a formal review of the DUI suspension, the DHSMV shall reinstate the person's driving privilege (although the license is still restricted), and shall waive the suspension requirement contained in current law. A driver would still be able to request an informal review in addition to obtaining a restricted license. The DHSMV is authorized to extend the time for a person to apply for a restricted license under certain circumstances and must notify drivers who fail to appear in writing to alert them to their right to review the suspension.

Under the bill, a driver who appears at a DHSMV office and does not apply for a restricted license retains his or her right to a formal review, as is the case under current law. The bill authorizes a hearing officer to receive testimony for a review telephonically and authorizes law enforcement agencies to submit materials related to the arrest to the DHSMV by electronic format.

The bill provides that, if a subpoenaed person does not appear at a formal hearing, the party seeking enforcement of such subpoena may do so by filing a motion for enforcement in the

criminal court case (if any) resulting from the incident that gave rise to the suspension. The bill provides that the DHSMV is not a party to the subpoena action. The bill prohibits a hearing officer from considering the lawfulness of the arrest during a formal review, and authorizes witnesses to appear telephonically at a formal review hearing. With respect to telephonic hearings, the bill requires a law enforcement agency seeking certiorari review to file the petition in the circuit court in the county where the law enforcement agency is located.

The bill amends s. 322.64, F.S., and removes language related to unlawful blood alcohol level and language related to ss. 322.63 and 316.1932, F.S., regarding the implied consent provisions, in response to the Florida Supreme Court case, *DHSMV v. Hernandez and McLaughlin*, 36 Fla. L. Weekly S243a (Fla. June 9, 2011).

The bill also clarifies commercial driver license disqualifications, convictions, administrative suspensions and hardship licenses, and it changes eligibility periods and ignition interlock device requirements for a hardship license.

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:

If the court elects to order the installation of an ignition interlock device, the DUI offender will be responsible for the costs associated with its installation, maintenance, and monitoring.

C. Government Sector Impact:

According to the DHSMV, if SB 864 is implemented, it will result in an increase in the number of ignition interlock device installations for second and third-time convicted DUI offenders. This analysis presumes that all offenders will elect to have the ignition

interlock device installation post conviction. Historical data shows that there are 62,275 DUI arrests annually, of which 14,140 (22%) are second or third-time offenders.²

In addition, there are currently 117,334 people with convictions whose vehicles have not yet been installed. Considering both of these groups, the bill's ignition interlock device changes are expected to increase the total ignition interlock device volume to 61,122 people on a weekly basis throughout the calendar year. This significant increase will require an additional 18 new FTEs in the DHSMV's Ignition Interlock Program to provide sufficient monitoring and case/program management.³

Using current staff distribution, the additional 18 FTEs include:

- 1 Section Supervisor;
- 10 Operations and Management Consultant IIs; and
- 7 Senior Highway Safety Specialists.

According to the DHSMV, estimated annual recurring costs for these additional FTEs and related expenses will be \$1,042,051.⁴

The DHSMV also states that if SB 864 is implemented, a reorganization of the Bureau of Administrative Reviews will occur as a result of changes in the formal review process resulting in a decrease of FTE. In addition, changes in the Bureau of Motorist Compliance will result in an increased need for FTE. The changes to the Bureau of Administrative Reviews will allow the DHSMV to reduce the size of its workforce by 44 FTEs statewide. This FTE reduction is based on an assumption that there will be a 50 percent reduction in the number of formal and informal reviews requested by drivers arrested for driving under the influence. The DHSMV expects some percentage of first-time DUI offenders to elect the new option of receiving a business-purposes-only license immediately, and waive the formal review hearing process. The bill's authorization for the DHSMV to conduct formal hearings by telephone is also a factor in the workforce reduction.⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

² DHSMV Legislative Analysis for SB 864, dated January 4, 2012, on file with the Senate Criminal Justice staff.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

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.



878914

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/09/2012	.	
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The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (6) of section 316.193, Florida
Statutes, is amended to read:

316.193 Driving under the influence; penalties.—

(6) With respect to any person convicted of a violation of
subsection (1), regardless of any penalty imposed pursuant to
subsection (2), subsection (3), or subsection (4):

(a) For the first conviction, the court shall place the
defendant on probation for a period not to exceed 1 year and, as



878914

a condition of the ~~such~~ probation, shall order the defendant to participate in public service or a community work project for a minimum of 50 hours. The court may order a defendant to pay a fine of \$10 for each hour of public service or community work otherwise required only if the court finds that the residence or location of the defendant at the time public service or community work is required or the defendant's employment obligations would create an undue hardship for the defendant. ~~However,~~ The total period of probation and incarceration may not exceed 1 year. The court must also, as a condition of probation, order:

1. The impoundment or immobilization of the vehicle that was operated by or was in the actual control of the defendant or any ~~one~~ vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h); and

2. The installation of an interlock ignition device in accordance with s. 316.1938 on all vehicles that are individually or jointly leased or owned and routinely operated by the defendant for at least 3 continuous months.

(b) For the second conviction for an offense that occurs within ~~a period of~~ 5 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for at least ~~not less than~~ 10 days. The court must



878914

also, as a condition of probation, order:

1. The impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization, for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days; and

2. The installation of an interlock ignition device in accordance with s. 316.1938 on all vehicles that are individually or jointly leased or owned and routinely operated by the defendant for at least 6 continuous months.

The impoundment, ~~or~~ immobilization, or installation of an ignition interlock device under this paragraph must not occur concurrently with the incarceration of the defendant, but, not including the installation of an ignition interlock device under this paragraph, and must occur concurrently with the driver ~~driver's~~ license revocation imposed under s. 322.28(2)(a)2. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h). At least 48 hours of confinement must be consecutive.

(c) For the third or subsequent conviction for an offense that occurs within ~~a period of~~ 10 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for at least ~~not less than~~ 30 days. The court must also, as a condition of probation, order:

1. The impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization, for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days; and



878914

71 2. The installation of an interlock ignition device in
72 accordance with s. 316.1938 upon all vehicles that are
73 individually or jointly leased or owned and routinely operated
74 by the defendant for at least 12 continuous months.

75
76 The impoundment, ~~or~~ immobilization, or installation of an
77 ignition interlock device under this paragraph must not occur
78 concurrently with the incarceration of the defendant, but, not
79 including the installation of an ignition interlock device under
80 this paragraph, and must occur concurrently with the driver
81 ~~driver's~~ license revocation imposed under s. 322.28(2)(a)3. The
82 impoundment or immobilization order may be dismissed in
83 accordance with paragraph (e), paragraph (f), paragraph (g), or
84 paragraph (h). At least 48 hours of confinement must be
85 consecutive.

86 (d) The court must, at the time of sentencing the
87 defendant, issue an order for:

- 88 1. The impoundment or immobilization of a vehicle; and
89 2. The installation of an ignition interlock device.

90
91 The order of impoundment or immobilization must include the name
92 and telephone numbers of all immobilization agencies meeting all
93 ~~of~~ the conditions of subsection (13). Within 7 business days
94 after the date that the court issues the order of impoundment or
95 immobilization, the clerk of the court must send notice by
96 certified mail, return receipt requested, to the registered
97 owner of each vehicle, if the registered owner is a person other
98 than the defendant, and to each person of record claiming a lien
99 against the vehicle.



878914

(e) A person who owns but was not operating the vehicle when the offense occurred may submit to the court a police report indicating that the vehicle was stolen at the time of the offense or documentation of having purchased the vehicle after the offense was committed from an entity other than the defendant or the defendant's agent. If the court finds that the vehicle was stolen or that the sale was not made to circumvent the order and to allow the defendant continued access to the vehicle, the order must be dismissed, and the owner of the vehicle will incur no costs. If the court denies the request to dismiss the order of impoundment or immobilization, the petitioner may request an evidentiary hearing.

(f) A person who owns but was not operating the vehicle when the offense occurred, and whose vehicle was stolen or who purchased the vehicle after the offense was committed directly from the defendant or the defendant's agent, may request an evidentiary hearing to determine whether the impoundment or immobilization should occur. If the court finds that ~~either~~ the vehicle was stolen or the purchase was made without knowledge of the offense, that the purchaser had no relationship to the defendant other than through the transaction, and that the ~~such~~ purchase would not circumvent the order and allow the defendant continued access to the vehicle, the order must be dismissed, and the owner of the vehicle will incur no costs.

(g) The court shall also dismiss the order of impoundment or immobilization of the vehicle if the court finds that the family of the owner of the vehicle has no other private or public means of transportation.

(h) The court may ~~also~~ dismiss the order of impoundment or



878914

immobilization of any vehicle ~~vehicles~~ that is ~~are~~ owned by the defendant but that is ~~are~~ operated solely by the employees of the defendant or any business owned by the defendant.

(i) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the vehicle or, if the vehicle is leased or rented, by the person leasing or renting the vehicle, unless the impoundment or immobilization order is dismissed. All provisions of s. 713.78 ~~shall~~ apply. The costs and fees for the impoundment or immobilization must be paid directly to the person impounding or immobilizing the vehicle.

(j) The person who owns a vehicle that is impounded or immobilized under this subsection ~~paragraph~~, or a person who has a lien of record against such a vehicle and who has not requested a review of the impoundment pursuant to paragraph (e), paragraph (f), or paragraph (g), may, within 10 days after the date that person has knowledge of the location of the vehicle, file a complaint in the county in which the owner resides to determine whether the vehicle was wrongfully taken or withheld from the owner or lienholder. Upon the filing of a complaint, the owner or lienholder may have the vehicle released by posting with the court a bond or other adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, to ensure the payment of such costs and fees if the owner or lienholder does not prevail. When the bond is posted and the fee is paid as set forth in s. 28.24, the clerk of the court shall issue a certificate releasing the vehicle. At the time of release, after reasonable inspection, the owner or lienholder must give a receipt to the towing or



878914

storage company indicating any loss or damage to the vehicle or to the contents of the vehicle.

(k) A defendant, ~~in the court's discretion,~~ may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced pursuant to this section in a residential alcoholism treatment program or a residential drug abuse treatment program. Any time spent in such a program must be credited by the court toward the term of imprisonment.

For the purposes of this section, a ~~any~~ conviction for a violation of s. 327.35; a previous conviction for the violation of former s. 316.1931, former s. 860.01, or former s. 316.028; or a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, driving with an unlawful breath-alcohol level, or any other similar alcohol-related or drug-related traffic offense, is also considered a previous conviction for violation of this section. However, in satisfaction of the fine imposed pursuant to this section, the court may, upon a finding that the defendant is financially unable to pay ~~either~~ all or part of the fine, order that the defendant participate for ~~a~~ specified additional ~~period of~~ time in public service or a community work project in lieu of payment of that portion of the fine which the court determines the defendant is unable to pay. In determining such additional sentence, the court shall consider the amount of the unpaid portion of the fine and the reasonable value of the services to be ordered; however, the court may not compute the reasonable value of services at a rate less than the federal minimum wage



878914

at the time of sentencing.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to interlock ignition devices ordered
for probation for DUI; amending s. 316.193, F.S.;
requiring that the court, as a condition of probation
for a conviction of the offense of driving under the
influence, impound or immobilize the vehicle that was
operated by or was in the actual control of the
defendant or require the defendant to install an
interlock ignition device on all vehicles that are
individually or jointly leased or owned and routinely
operated by the defendant; prohibiting the
installation of an ignition interlock device from
occurring concurrently with the incarceration of the
defendant; providing an exception from a requirement
that the installation of an ignition interlock device
occur concurrently with the driver license revocation;
providing an effective date.



100426

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/09/2012	.	
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	.	

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

Senate Substitute for Amendment (878914) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (6) of section 316.193, Florida Statutes, is amended to read:

316.193 Driving under the influence; penalties.—

(6) With respect to any person convicted of a violation of subsection (1), regardless of any penalty imposed pursuant to subsection (2), subsection (3), or subsection (4):

(a) For the first conviction, the court shall place the



100426

defendant on probation for a period not to exceed 1 year and, as a condition of the ~~such~~ probation, shall order the defendant to participate in public service or a community work project for a minimum of 50 hours. The court may order a defendant to pay a fine of \$10 for each hour of public service or community work otherwise required only if the court finds that the residence or location of the defendant at the time public service or community work is required or the defendant's employment obligations would create an undue hardship for the defendant. ~~However,~~ The total period of probation and incarceration may not exceed 1 year. The court must also, as a condition of probation, order:

1. The impoundment or immobilization of the vehicle that was operated by or was in the actual control of the defendant or any ~~one~~ vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h); or

2. The installation of an interlock ignition device in accordance with s. 316.1938 on all vehicles that are individually or jointly leased or owned and routinely operated by the defendant for at least 3 continuous months.

(b) For the second conviction for an offense that occurs within ~~a period of~~ 5 years after the date of a prior conviction for violation of this section, the court shall order



100426

imprisonment for at least ~~not less than~~ 10 days. The court must also, as a condition of probation, order:

1. The impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization, for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days; or

2. The installation of an interlock ignition device in accordance with s. 316.1938 on all vehicles that are individually or jointly leased or owned and routinely operated by the defendant for at least 6 continuous months.

The impoundment, ~~or~~ immobilization, or the installation of an ignition interlock device under this paragraph must not occur concurrently with the incarceration of the defendant, but, not including the installation of an ignition interlock device under this paragraph, ~~and~~ must occur concurrently with the driver ~~driver's~~ license revocation imposed under s. 322.28(2)(a)2. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h). At least 48 hours of confinement must be consecutive.

(c) For the third or subsequent conviction for an offense that occurs within ~~a period of~~ 10 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for at least ~~not less than~~ 30 days. The court must also, as a condition of probation, order:

1. The impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization, for a period of 90 days or for the unexpired term of any lease



100426

or rental agreement that expires within 90 days; or

2. The installation of an interlock ignition device in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the defendant for at least 12 continuous months.

The impoundment, ~~or~~ immobilization, or the installation of an ignition interlock device under this paragraph must not occur concurrently with the incarceration of the defendant, but, not including the installation of an ignition interlock device under this paragraph, and must occur concurrently with the driver ~~driver's~~ license revocation imposed under s. 322.28(2)(a)3. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h). At least 48 hours of confinement must be consecutive.

(d) The court must, at the time of sentencing the defendant, issue an order for:

1. The impoundment or immobilization of a vehicle; or
2. The installation of an ignition interlock device.

The order of impoundment or immobilization must include the name and telephone numbers of all immobilization agencies meeting all ~~of~~ the conditions of subsection (13). Within 7 business days after the date that the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of each vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien



100426

100 against the vehicle.

101 (e) A person who owns but was not operating the vehicle
102 when the offense occurred may submit to the court a police
103 report indicating that the vehicle was stolen at the time of the
104 offense or documentation of having purchased the vehicle after
105 the offense was committed from an entity other than the
106 defendant or the defendant's agent. If the court finds that the
107 vehicle was stolen or that the sale was not made to circumvent
108 the order and to allow the defendant continued access to the
109 vehicle, the order must be dismissed, and the owner of the
110 vehicle will incur no costs. If the court denies the request to
111 dismiss the order of impoundment or immobilization, the
112 petitioner may request an evidentiary hearing.

113 (f) A person who owns but was not operating the vehicle
114 when the offense occurred, and whose vehicle was stolen or who
115 purchased the vehicle after the offense was committed directly
116 from the defendant or the defendant's agent, may request an
117 evidentiary hearing to determine whether the impoundment or
118 immobilization should occur. If the court finds that ~~either~~ the
119 vehicle was stolen or the purchase was made without knowledge of
120 the offense, that the purchaser had no relationship to the
121 defendant other than through the transaction, and that the ~~such~~
122 purchase would not circumvent the order and allow the defendant
123 continued access to the vehicle, the order must be dismissed,
124 and the owner of the vehicle will incur no costs.

125 (g) The court shall also dismiss the order of impoundment
126 or immobilization of the vehicle if the court finds that the
127 family of the owner of the vehicle has no other private or
128 public means of transportation.



100426

(h) The court may ~~also~~ dismiss the order of impoundment or immobilization of any vehicle ~~vehicles~~ that is ~~are~~ owned by the defendant but that is ~~are~~ operated solely by the employees of the defendant or any business owned by the defendant.

(i) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the vehicle or, if the vehicle is leased or rented, by the person leasing or renting the vehicle, unless the impoundment or immobilization order is dismissed. All provisions of s. 713.78 ~~shall~~ apply. The costs and fees for the impoundment or immobilization must be paid directly to the person impounding or immobilizing the vehicle.

(j) The person who owns a vehicle that is impounded or immobilized under this subsection ~~paragraph~~, or a person who has a lien of record against such a vehicle and who has not requested a review of the impoundment pursuant to paragraph (e), paragraph (f), or paragraph (g), may, within 10 days after the date that person has knowledge of the location of the vehicle, file a complaint in the county in which the owner resides to determine whether the vehicle was wrongfully taken or withheld from the owner or lienholder. Upon the filing of a complaint, the owner or lienholder may have the vehicle released by posting with the court a bond or other adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, to ensure the payment of such costs and fees if the owner or lienholder does not prevail. When the bond is posted and the fee is paid as set forth in s. 28.24, the clerk of the court shall issue a certificate releasing the vehicle. At the time of release, after reasonable inspection,



100426

the owner or lienholder must give a receipt to the towing or storage company indicating any loss or damage to the vehicle or to the contents of the vehicle.

(k) A defendant, ~~in the court's discretion,~~ may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced pursuant to this section in a residential alcoholism treatment program or a residential drug abuse treatment program. Any time spent in such a program must be credited by the court toward the term of imprisonment.

For the purposes of this section, a ~~any~~ conviction for a violation of s. 327.35; a previous conviction for the violation of former s. 316.1931, former s. 860.01, or former s. 316.028; or a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, driving with an unlawful breath-alcohol level, or any other similar alcohol-related or drug-related traffic offense, is also considered a previous conviction for violation of this section. However, in satisfaction of the fine imposed pursuant to this section, the court may, upon a finding that the defendant is financially unable to pay ~~either~~ all or part of the fine, order that the defendant participate for a specified additional ~~period of~~ time in public service or a community work project in lieu of payment of that portion of the fine which the court determines the defendant is unable to pay. In determining such additional sentence, the court shall consider the amount of the unpaid portion of the fine and the reasonable value of the services to be ordered; however, the court may not compute the reasonable



100426

value of services at a rate less than the federal minimum wage
at the time of sentencing.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to interlock ignition devices ordered
for probation for DUI; amending s. 316.193, F.S.;
requiring that the court, as a condition of probation
for a conviction of the offense of driving under the
influence, impound or immobilize the vehicle that was
operated by or was in the actual control of the
defendant or require the defendant to install an
interlock ignition device on all vehicles that are
individually or jointly leased or owned and routinely
operated by the defendant; prohibiting the
installation of an ignition interlock device from
occurring concurrently with the incarceration of the
defendant; providing an exception from a requirement
that the installation of an ignition interlock device
occur concurrently with the driver license revocation;
providing an effective date.

By Senator Altman

24-00717-12

2012864

1 A bill to be entitled
2 An act relating to driving under the influence;
3 amending s. 316.193, F.S.; requiring that the court,
4 as a condition of probation for a conviction of the
5 offense of driving under the influence, impound or
6 immobilize the vehicle that was operated by or was in
7 the actual control of the defendant or require the
8 defendant to install an interlock ignition device on
9 all vehicles that are individually or jointly leased
10 or owned and routinely operated by the defendant;
11 prohibiting the installation of an ignition interlock
12 device from occurring concurrently with the
13 incarceration of the defendant; requiring that the
14 installation occur concurrently with the driver
15 license revocation; amending s. 322.2615, F.S.;
16 requiring that a law enforcement officer issue to the
17 person driving under the influence a notice of
18 suspension of the person's driving privilege and a
19 notice of the person's obligation to appear at a
20 designated office of the Department of Highway Safety
21 and Motor Vehicles under certain circumstances;
22 providing that the notice of suspension acts as a 10-
23 day temporary driving privilege; authorizing a driver
24 to submit materials relevant to the suspension at a
25 review hearing if the driver elected to have a review
26 hearing and if he or she appeared at the department
27 office after receipt of the notice of suspension and
28 notice to appear; requiring that the driver appear at
29 a department office after receipt of the notice of

Page 1 of 35

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

24-00717-12

2012864

30 suspension and notice to appear; requiring that the
31 department reinstate, under certain circumstances, the
32 driver's driving privilege restricted to business
33 purposes only; providing that if the driver fails to
34 appear as required, his or her license will remain
35 suspended and all rights of review will be waived;
36 authorizing the department to extend the time for a
37 person to apply for a restricted driver license;
38 setting forth the restrictions applicable to a
39 person's driving privilege; providing that if a person
40 accepts the reinstated driving privilege restricted to
41 business purposes only, he or she is deemed to have
42 waived the right to a formal review of the request to
43 submit to a breath, blood, or urine test and a formal
44 review of the suspension of his or her driving
45 privilege; requiring that the department notify the
46 person in writing of his or her right to review the
47 driving suspension if he or she is not eligible for
48 driving privileges restricted to business purposes
49 only; requiring that the department provide the person
50 with certain information; requiring that the
51 department issue a temporary permit if the person is
52 otherwise eligible for the driving privilege;
53 providing that the temporary permit is restricted to
54 driving for employment purposes only; authorizing a
55 driver to request a formal or informal review of the
56 suspension of his or her driving privilege; providing
57 that a person electing to seek a formal review is
58 deemed to have waived the right to a restricted

Page 2 of 35

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

24-00717-12

2012864

59 driving privilege; authorizing a hearing officer to
 60 receive testimony from witnesses appearing at a formal
 61 or informal review hearing telephonically; requiring
 62 that a law enforcement officer submit all materials
 63 relating to the notice of suspension and the notice to
 64 appear to the department in electronic form;
 65 authorizing witnesses to appear at a formal review
 66 hearing telephonically; authorizing a party to seek
 67 enforcement of a subpoena for a review hearing by
 68 filing a motion for enforcement in a criminal court
 69 case resulting from the incident that gave rise to the
 70 suspension; prohibiting the department from being a
 71 party to the subpoena action; prohibiting the hearing
 72 officer from considering the lawfulness of the arrest
 73 in reviewing a suspension; providing that the
 74 temporary permit that the department issues, if the
 75 formal review hearing is continued at the department's
 76 initiative, grants a driving privilege restricted to
 77 employment purposes only; requiring that a law
 78 enforcement agency desiring to appeal a decision of
 79 the department file the petition for writ of
 80 certiorari to the circuit court in the county in which
 81 the law enforcement agency is located for telephonic
 82 hearings; requiring that the department remove the
 83 restriction from a person's driver license if the
 84 person is found not guilty of certain violations;
 85 amending s. 322.2616, F.S.; deleting the requirement
 86 that the informal review hearing include materials
 87 submitted by the person whose license is suspended;

Page 3 of 35

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

24-00717-12

2012864

88 providing procedures for a formal review hearing for
 89 the suspension of driving privileges for a person
 90 under 21 years of age; amending s. 322.2715, F.S.;
 91 authorizing a convicted person to elect to install an
 92 ignition interlock device on all vehicles that are
 93 individually or jointly leased or owned and routinely
 94 operated by the convicted person, in lieu of the 5- or
 95 10-year license revocation period otherwise required
 96 by law; requiring that the ignition interlock device
 97 be installed for specified periods; amending s.
 98 322.64, F.S.; requiring that the disqualification of a
 99 driver from operating a commercial motor vehicle be
 100 treated as conviction of driving with an unlawful
 101 blood-alcohol or breath-alcohol level under certain
 102 circumstances; providing hearing procedures for the
 103 revocation of a commercial motor vehicle license for a
 104 commercial driver convicted of the offense of driving
 105 under the influence; providing an effective date.

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

109 Section 1. Subsection (6) of section 316.193, Florida
 110 Statutes, is amended to read:

111 316.193 Driving under the influence; penalties.—

112 (6) With respect to any person convicted of a violation of
 113 subsection (1), regardless of any penalty imposed pursuant to
 114 subsection (2), subsection (3), or subsection (4):

115 (a) For the first conviction, the court shall place the
 116 defendant on probation for a period not to exceed 1 year and, as

Page 4 of 35

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

24-00717-12 2012864

a condition of ~~the such~~ probation, shall order the defendant to participate in public service or a community work project for a minimum of 50 hours. The court may order a defendant to pay a fine of \$10 for each hour of public service or community work otherwise required only if the court finds that the residence or location of the defendant at the time public service or community work is required or the defendant's employment obligations would create an undue hardship for the defendant. ~~However,~~ The total period of probation and incarceration may not exceed 1 year. The court must also, as a condition of probation, order:

1. The impoundment or immobilization of the vehicle that was operated by or was in the actual control of the defendant or any ~~one~~ vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h); or

2. The installation of an interlock ignition device in accordance with s. 316.1938 on all vehicles that are individually or jointly leased or owned and routinely operated by the defendant for at least 3 continuous months.

(b) For the second conviction for an offense that occurs within ~~a period of~~ 5 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for at least ~~not less than~~ 10 days. The court must

24-00717-12 2012864

also, as a condition of probation, order:

1. The impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization, for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days; or

2. The installation of an interlock ignition device in accordance with s. 316.1938 on all vehicles that are individually or jointly leased or owned and routinely operated by the defendant for at least 6 continuous months.

The impoundment or immobilization or the installation of an ignition interlock device under this paragraph must not occur concurrently with the incarceration of the defendant and must occur concurrently with the driver ~~driver's~~ license revocation imposed under s. 322.28(2)(a)2. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h). At least 48 hours of confinement must be consecutive.

(c) For the third or subsequent conviction for an offense that occurs within ~~a period of~~ 10 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for at least ~~not less than~~ 30 days. The court must also, as a condition of probation, order:

1. The impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization, for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days; or

2. The installation of an interlock ignition device in accordance with s. 316.1938 upon all vehicles that are

24-00717-12 2012864

individually or jointly leased or owned and routinely operated
by the defendant for at least 12 continuous months.

The impoundment or immobilization or the installation of an
ignition interlock device under this paragraph must not occur
concurrently with the incarceration of the defendant and must
occur concurrently with the driver ~~driver's~~ license revocation
imposed under s. 322.28(2)(a)3. The impoundment or
immobilization order may be dismissed in accordance with
paragraph (e), paragraph (f), paragraph (g), or paragraph (h).
At least 48 hours of confinement must be consecutive.

(d) The court must, at the time of sentencing the
defendant, issue an order for:

1. The impoundment or immobilization of a vehicle; or
2. The installation of an ignition interlock device.

The order of impoundment or immobilization must include the name
and telephone numbers of all immobilization agencies meeting all
of the conditions of subsection (13). Within 7 business days
after the date that the court issues the order of impoundment or
immobilization, the clerk of the court must send notice by
certified mail, return receipt requested, to the registered
owner of each vehicle, if the registered owner is a person other
than the defendant, and to each person of record claiming a lien
against the vehicle.

(e) A person who owns but was not operating the vehicle
when the offense occurred may submit to the court a police
report indicating that the vehicle was stolen at the time of the
offense or documentation of having purchased the vehicle after

24-00717-12 2012864

the offense was committed from an entity other than the
defendant or the defendant's agent. If the court finds that the
vehicle was stolen or that the sale was not made to circumvent
the order and to allow the defendant continued access to the
vehicle, the order must be dismissed, and the owner of the
vehicle will incur no costs. If the court denies the request to
dismiss the order of impoundment or immobilization, the
petitioner may request an evidentiary hearing.

(f) A person who owns but was not operating the vehicle
when the offense occurred, and whose vehicle was stolen or who
purchased the vehicle after the offense was committed directly
from the defendant or the defendant's agent, may request an
evidentiary hearing to determine whether the impoundment or
immobilization should occur. If the court finds that ~~either~~ the
vehicle was stolen or the purchase was made without knowledge of
the offense, that the purchaser had no relationship to the
defendant other than through the transaction, and that ~~the such~~
purchase would not circumvent the order and allow the defendant
continued access to the vehicle, the order must be dismissed,
and the owner of the vehicle will incur no costs.

(g) The court shall also dismiss the order of impoundment
or immobilization of the vehicle if the court finds that the
family of the owner of the vehicle has no other private or
public means of transportation.

(h) The court may ~~also~~ dismiss the order of impoundment or
immobilization of any vehicle ~~vehicles~~ that is ~~are~~ owned by the
defendant but that is ~~are~~ operated solely by the employees of
the defendant or any business owned by the defendant.

(i) All costs and fees for the impoundment or

24-00717-12 2012864
 233 immobilization, including the cost of notification, must be paid
 234 by the owner of the vehicle or, if the vehicle is leased or
 235 rented, by the person leasing or renting the vehicle, unless the
 236 impoundment or immobilization order is dismissed. All provisions
 237 of s. 713.78 ~~shall~~ apply. The costs and fees for the impoundment
 238 or immobilization must be paid directly to the person impounding
 239 or immobilizing the vehicle.

(j) The person who owns a vehicle that is impounded or
 241 immobilized under this subsection ~~paragraph~~, or a person who has
 242 a lien of record against such a vehicle and who has not
 243 requested a review of the impoundment pursuant to paragraph (e),
 244 paragraph (f), or paragraph (g), may, within 10 days after the
 245 date that person has knowledge of the location of the vehicle,
 246 file a complaint in the county in which the owner resides to
 247 determine whether the vehicle was wrongfully taken or withheld
 248 from the owner or lienholder. Upon the filing of a complaint,
 249 the owner or lienholder may have the vehicle released by posting
 250 with the court a bond or other adequate security equal to the
 251 amount of the costs and fees for impoundment or immobilization,
 252 including towing or storage, to ensure the payment of such costs
 253 and fees if the owner or lienholder does not prevail. When the
 254 bond is posted and the fee is paid as set forth in s. 28.24, the
 255 clerk of the court shall issue a certificate releasing the
 256 vehicle. At the time of release, after reasonable inspection,
 257 the owner or lienholder must give a receipt to the towing or
 258 storage company indicating any loss or damage to the vehicle or
 259 to the contents of the vehicle.

(k) A defendant, ~~in the court's discretion~~, may be required
 261 to serve all or any portion of a term of imprisonment to which

24-00717-12 2012864
 262 the defendant has been sentenced pursuant to this section in a
 263 residential alcoholism treatment program or a residential drug
 264 abuse treatment program. Any time spent in such a program must
 265 be credited by the court toward the term of imprisonment.

266
 267 For the purposes of this section, ~~a any~~ conviction for a
 268 violation of s. 327.35; a previous conviction for the violation
 269 of former s. 316.1931, former s. 860.01, or former s. 316.028;
 270 or a previous conviction outside this state for driving under
 271 the influence, driving while intoxicated, driving with an
 272 unlawful blood-alcohol level, driving with an unlawful breath-
 273 alcohol level, or any other similar alcohol-related or drug-
 274 related traffic offense, is also considered a previous
 275 conviction for violation of this section. However, in
 276 satisfaction of the fine imposed pursuant to this section, the
 277 court may, upon a finding that the defendant is financially
 278 unable to pay ~~either~~ all or part of the fine, order that the
 279 defendant participate for a specified additional ~~period of~~ time
 280 in public service or a community work project in lieu of payment
 281 of that portion of the fine which the court determines the
 282 defendant is unable to pay. In determining such additional
 283 sentence, the court shall consider the amount of the unpaid
 284 portion of the fine and the reasonable value of the services to
 285 be ordered; however, the court may not compute the reasonable
 286 value of services at a rate less than the federal minimum wage
 287 at the time of sentencing.

288 Section 2. Section 322.2615, Florida Statutes, is amended
 289 to read:

290 322.2615 Restriction or suspension of license; right to

24-00717-12

2012864

review.-

(1) (a) Notwithstanding whether an arrest is made for any criminal offense, a law enforcement officer or correctional officer shall, on behalf of the department, suspend the driving privilege of a person who is driving or is in actual physical control of a motor vehicle and who has an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher, or of a person who has refused to submit to a urine test or a test of ~~his or her~~ breath-alcohol or blood-alcohol level. The officer shall issue to the person the notice of suspension and notice to appear. The person shall appear at a designated department office within 10 days after receipt of the notice. The notice of suspension and notice to appear serve as take the person's ~~driver's~~ license and issue the person a 10-day temporary driving permit if the person is otherwise eligible for the driving privilege ~~and shall issue the person a notice of suspension.~~ If a blood test has been administered, the officer or the agency employing the officer shall transmit the ~~such~~ results to the department within 5 days after receipt of the results. If the department then determines that the person had a blood-alcohol level or breath-alcohol level of 0.08 or higher, the department shall suspend the person's driver ~~driver's~~ license pursuant to subsection (3).

(b) The suspension under paragraph (a) shall be pursuant to, and the notice of suspension and notice to appear shall inform the driver of, the following:

1.a. The driver refused to submit to a ~~lawful~~ breath, blood, or urine test and his or her driving privilege is suspended for ~~a period of~~ 1 year for a first refusal, or for a

24-00717-12

2012864

~~period of~~ 18 months if his or her driving privilege has been previously suspended as a result of a refusal to submit to such a test; or

b. The driver was driving or was in actual physical control of a motor vehicle and had a ~~an unlawful~~ blood-alcohol level or breath-alcohol level of 0.08 or higher and his or her driving privilege is suspended for ~~a period of~~ 6 months for a first offense, or for ~~a period of~~ 1 year if his or her driving privilege has been previously suspended under this section.

2. The suspension period commences ~~shall commence~~ on the date of issuance of the notice of suspension and notice to appear.

3. ~~The driver may request a formal or informal review of the suspension by the department within 10 days after the date of issuance of the notice of suspension.~~

3.4. The temporary permit issued at the time of suspension expires at midnight of the 10th day following the date of issuance of the notice of suspension and notice to appear.

5. ~~The driver may submit to the department any materials relevant to the suspension.~~

(c) A person whose driving privilege has been suspended pursuant to this subsection or subsection (3) shall appear at a designated department office within 10 days after receipt of the notice of suspension and notice to appear. If the person fails to appear as required, his or her license will remain suspended and all rights of review as provided in this section will be waived.

(d) If it appears that the person whose driving privilege has been suspended meets the requirements of s. 322.271 and is

24-00717-12 2012864
 otherwise eligible for the driving privilege and if the person wishes to obtain a restricted driver license, the department shall, upon payment by the person of the appropriate fees to the department, reinstate the person's driving privilege restricted to business purposes only, as defined in, and pursuant to s. 322.271. The department shall issue a replacement driver license with the applicable restrictions. The department may extend the time for a person who qualifies for a restricted driver license to apply for the restricted license upon good cause shown in writing.

1. The restrictions on a person's driving privilege under this paragraph shall be in place for:

a. One year, if the driver refused to submit to a breath, blood, or urine test requested pursuant to this section; or

b. Six months, if the driver was driving or was in actual physical control of a motor vehicle and had an unlawful blood-alcohol or breath-alcohol level of 0.08 or higher.

2. A person who accepts the reinstated driving privilege restricted to business purposes only as provided in this paragraph is deemed to have waived the right to a formal review of the suspension of his or her driving privilege. Such a waiver may not be used as evidence in any other proceeding.

(e) The department shall notify the person whose driving privilege has been suspended in writing of his or her right to review the suspension if the person has not applied for a restricted driver license pursuant to s. 322.271.

(f) The notice of the right to a formal or informal review of a suspension shall inform the driver of the following:

1. The driver may request a formal or informal review by

24-00717-12 2012864
 the department within 10 days after the department notifies the person of the right to review. A person electing to seek a formal review of the suspension is deemed to have waived his or her right to a restricted driving privilege except as set forth in subsection (10). Hearings may be conducted telephonically. Witnesses shall be sworn by a notary public, certified court reporter, or law enforcement officer pursuant to s. 117.10.

2. The driver may submit to the department any material relevant to the suspension. The driver or his or her counsel must provide a telephone number where he or she can be contacted for the hearing. A person who does not appear at a designated department office as required by paragraph (c) waives his or her right to submit materials to the department.

(2) Except as provided in paragraph (1)(a), the law enforcement officer shall forward to the department, within 5 days after issuing the notice of suspension and notice to appear, the driver ~~driver's~~ license; an affidavit stating the officer's grounds for belief that the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances; the results of any breath or blood test or an affidavit stating that a breath, blood, or urine test was requested by ~~the~~ a law enforcement officer or a correctional officer pursuant to this section and that the person refused to submit; the officer's description of the person's field sobriety ~~exercise test~~, if any; and a copy of the notice of suspension and notice appear. The failure of the officer to submit materials within the 5-day period specified in this subsection and in subsection (1) does not affect the department's ability

24-00717-12 2012864
 407 to consider any evidence submitted at or ~~before~~ prior to the
 408 hearing. The officer may also submit a copy of the crash report
 409 and a copy of a videotape of the field sobriety ~~exercise test~~ or
 410 the attempt to administer ~~the exercise such test~~. Materials
 411 submitted to the department by a law enforcement agency or
 412 correctional agency shall be considered self-authenticating and
 413 shall be in the record for consideration by the hearing officer.
 414 All materials may be submitted in electronic form.
 415 Notwithstanding s. 316.066(5), the crash report shall be
 416 considered by the hearing officer.

417 (3) If the department determines that the license should be
 418 suspended pursuant to this section and if the notice of
 419 suspension and notice to appear has not already been served upon
 420 the person by ~~the~~ a law enforcement officer or correctional
 421 officer as provided in subsection (1), the department shall
 422 issue a notice of suspension and, unless the notice is mailed
 423 pursuant to s. 322.251, a temporary permit that expires 10 days
 424 after the date of issuance if the driver is otherwise eligible
 425 for the driving privilege.

426 (4) If the person whose license was suspended requests an
 427 informal review ~~pursuant to subparagraph (1)(b)3.~~, the
 428 department shall conduct the informal review by a hearing
 429 officer employed by the department. ~~The~~ Such informal review
 430 hearing shall consist solely of an examination by the hearing
 431 officer ~~department~~ of the materials submitted by ~~the~~ a law
 432 enforcement officer or correctional officer ~~and by the person~~
 433 ~~whose license was suspended~~, and the testimonial presence of the
 434 ~~an~~ officer or any other witness is not required.

435 (5) After completion of the informal review, notice of the

24-00717-12 2012864
 436 department's decision sustaining, amending, or invalidating the
 437 suspension of the driver ~~driver's~~ license of the person whose
 438 license was suspended must be provided to such person. ~~The~~ Such
 439 notice must be mailed to the person at the last known address
 440 shown on the department's records, or to the address provided in
 441 the law enforcement officer's report if ~~the~~ such address differs
 442 from the address of record, within 21 days after the expiration
 443 of the temporary permit issued pursuant to subsection (1) or
 444 subsection (3).

445 (6) (a) If the person whose license was suspended requests a
 446 formal review, the department must schedule a hearing to be held
 447 within 30 days after ~~the~~ such request is received by the
 448 department and must notify the person of the date, time, and
 449 place of the hearing.

450 (b) ~~The~~ Such formal review hearing shall be held before a
 451 hearing officer employed by the department, and the hearing
 452 officer may ~~shall be authorized to~~ administer oaths, examine
 453 witnesses and take testimony, receive relevant evidence, issue
 454 subpoenas for the officers and witnesses identified in documents
 455 in subsection (2), regulate the course and conduct of the
 456 hearing, question witnesses, and make a ruling on the
 457 suspension.

458 (c) The party requesting the presence of a witness ~~is~~ shall
 459 ~~be~~ responsible for the payment of any witness fees and for
 460 notifying in writing the state attorney's office in the
 461 appropriate circuit of the issuance of the subpoena. If the
 462 person who requests ~~the~~ a formal review hearing fails to appear
 463 and the hearing officer finds such failure to be without just
 464 cause, the right to a formal hearing is waived, and the

24-00717-12

2012864

suspension shall be sustained. The hearing officer may authorize witnesses to the formal review hearing to appear telephonically.

(d)(e) A party may seek enforcement of a subpoena under paragraph (b) by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena resides or by filing a motion for enforcement in any criminal court case resulting from the driving or actual physical control of the motor vehicle which gave rise to the suspension under this section. A failure to comply with an order of the court shall result in a finding of contempt of court. However, a person is not in contempt while a subpoena is being challenged. The department may not be a party to any subpoena enforcement action.

(e)(d) The department must, within 7 working days after the a formal review hearing, provide ~~send~~ notice to the person of the hearing officer's decision as to whether sufficient cause exists to sustain, amend, or invalidate the suspension.

(7) In a formal review hearing under subsection (6) or an informal review hearing under subsection (4), the hearing officer shall determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the suspension. Notwithstanding s. 316.1932, the hearing officer may not consider the lawfulness of the arrest and shall limit the scope of the review shall be limited to the following issues:

(a) If the license was suspended for driving with a an ~~unlawful~~ blood-alcohol level or breath-alcohol level of 0.08 or higher:

1. Whether the law enforcement officer had probable cause

24-00717-12

2012864

to believe that the person whose license was suspended was driving or was in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.

2. Whether the person whose license was suspended had a an ~~unlawful~~ blood-alcohol level or breath-alcohol level of 0.08 or higher ~~as provided in s. 316.193.~~

(b) If the license was suspended for refusal to submit to a breath, blood, or urine test:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or was in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.

2. Whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.

3. Whether the person whose license was suspended was told that if he or she refused to submit to such test, his or her privilege to operate a motor vehicle would be suspended for a ~~period of~~ 1 year or, in the case of a second or subsequent refusal, for ~~a period of~~ 18 months.

(8) Based on the determination of the hearing officer pursuant to subsection (7) for both informal hearings under subsection (4) and formal hearings under subsection (6), the department shall:

(a) Sustain the suspension of the person's driving privilege for ~~a period of~~ 1 year for a first refusal, or for a ~~period of~~ 18 months if the driving privilege of the such person

24-00717-12 2012864
 523 has been previously suspended as a result of a refusal to submit
 524 to such ~~test tests~~, if the person refused to submit to a ~~lawful~~
 525 breath, blood, or urine test requested pursuant to this section.
 526 The suspension period begins ~~commences~~ on the date of issuance
 527 of the notice of suspension.

(b) Sustain the suspension of the person's driving
 529 privilege for ~~a period of~~ 6 months for a blood-alcohol level or
 530 breath-alcohol level of 0.08 or higher, or for ~~a period of~~ 1
 531 year if the driving privilege of the ~~such~~ person has been
 532 previously suspended under this section as a result of driving
 533 with a blood-alcohol level or breath-alcohol level of 0.08 or
 534 higher an unlawful alcohol level. The suspension period begins
 535 ~~commences~~ on the date of issuance of the notice of suspension.

(9) A request for a formal review hearing or an informal
 537 review hearing does ~~shall~~ not stay the suspension of the
 538 person's driver ~~driver's~~ license. If the department fails to
 539 schedule a requested ~~the~~ formal review hearing to be held within
 540 30 days after receipt of the request ~~therefor~~, the department
 541 shall invalidate the suspension. If the scheduled hearing is
 542 continued at the department's initiative, the department shall
 543 issue a temporary driving permit that is ~~shall be~~ valid until
 544 the hearing is conducted if the person is otherwise eligible for
 545 the driving privilege. The ~~Such~~ permit may not be issued to a
 546 person who sought and obtained a continuance of the hearing. The
 547 temporary permit issued under this subsection grants a driving
 548 privilege restricted to employment purposes ~~shall authorize~~
 549 ~~driving for business or employment use only, as defined in s.~~
 550 322.271.

(10) A person whose driver ~~driver's~~ license is suspended

24-00717-12 2012864
 552 under subsection (1) or subsection (3) may apply for issuance of
 553 a license for business or employment purposes ~~only~~ if the person
 554 is otherwise eligible for the driving privilege pursuant to s.
 555 322.271.

(a) If the suspension of the driver ~~driver's~~ license of the
 557 person for refusal or failure to submit to a breath, urine, or
 558 blood test is sustained, the person is not eligible to receive a
 559 license for business or employment purposes ~~only~~, pursuant to s.
 560 322.271, until 90 days have elapsed after the expiration of the
 561 last temporary permit issued. If the driver is not issued a 10-
 562 day permit pursuant to this section or s. 322.64 because he or
 563 she is ineligible for the permit and the suspension for failure
 564 to submit to a breath, urine, or blood test is sustained ~~not~~
 565 ~~invalidated~~ by the department, the driver is not eligible to
 566 receive a business or employment license pursuant to s. 322.271
 567 until 90 days have elapsed from the date of the suspension.

(b) If the suspension of the driver ~~driver's~~ license of the
 569 person relating to unlawful blood-alcohol level or breath-
 570 alcohol level of 0.08 or higher is sustained, the person is not
 571 eligible to receive a license for business or employment
 572 purposes ~~only~~ pursuant to s. 322.271 until 30 days have elapsed
 573 after the expiration of the last temporary permit issued. If the
 574 driver is not issued a 10-day permit pursuant to this section or
 575 s. 322.64 because he or she is ineligible for the permit and the
 576 suspension relating to unlawful blood-alcohol level or breath-
 577 alcohol level of 0.08 or higher is sustained ~~not invalidated~~ by
 578 the department, the driver is not eligible to receive a business
 579 or employment license pursuant to s. 322.271 until 30 days have
 580 elapsed from the date of the suspension.

24-00717-12

2012864

(11) ~~A~~ The formal review hearing may be conducted upon a review of the reports of a law enforcement officer or a correctional officer, including documents relating to the administration of a breath test or blood test or the refusal to take either test or the refusal to take a urine test. However, as provided in subsection (6), the driver may subpoena the officer or any person who administered or analyzed ~~the a~~ breath or blood test. The hearing officer may permit witnesses at the formal review hearing to appear telephonically.

(12) ~~The Formal and informal review hearings hearing and the informal review hearing~~ are exempt from the provisions of chapter 120. The department may adopt rules for the conduct of reviews under this section.

(13) Pursuant to s. 322.21, a person may appeal any decision of the department sustaining a suspension of his or her ~~driver driver's~~ license by a petition for writ of certiorari to the circuit court in the county in which the wherein such person resides or wherein a formal or informal review was conducted pursuant to s. 322.31. However, an appeal ~~does shall~~ not stay the suspension. A law enforcement agency may appeal any decision of the department invalidating a suspension by a petition for writ of certiorari to the circuit court in the county in which wherein a formal or informal review was conducted. For telephonic hearings, the law enforcement agency shall file the petition for writ of certiorari to the circuit court in the county in which the law enforcement agency is located. This subsection ~~does shall not be construed to~~ provide for a de novo appeal.

(14) (a) The decision of the department under this section

24-00717-12

2012864

or any circuit court review thereof may not be considered in any trial for a violation of s. 316.193, and a written statement submitted by a person in his or her request for departmental review under this section may not be admitted into evidence against him or her in any such trial.

(b) The disposition of any related criminal proceeding ~~proceedings~~ does not affect a suspension for refusal to submit to a blood, breath, or urine test imposed under this section.

(15) If the department suspends a person's license under s. 322.2616, it may not also suspend the person's license under this section for the same episode that was the basis for the suspension under s. 322.2616.

(16) The department shall invalidate a suspension for driving with an unlawful blood-alcohol level or breath-alcohol level imposed under this section if the suspended person is found not guilty at trial of an underlying violation of s. 316.193. If the person obtained a license restricted to business purposes only pursuant to paragraph (1)(c), the department shall remove the restriction from the person's driver license.

Section 3. Subsections (5), (7), (12), and (14) of section 322.2616, Florida Statutes, are amended to read:

322.2616 Suspension of license; persons under 21 years of age; right to review.—

(5) If the person whose license is suspended requests an informal review under subparagraph (2)(b)3., the department shall conduct the informal review by a hearing officer employed by the department within 30 days after the request is received by the department and shall issue such person a temporary driving permit for business purposes only to expire on the date

24-00717-12

2012864

that ~~the such~~ review is scheduled to be conducted if the person is otherwise eligible. The informal review hearing must consist solely of an examination by the department of the materials submitted by ~~the a~~ law enforcement officer or correctional officer ~~and by the person whose license is suspended~~, and the ~~testimony presence~~ of ~~the an~~ officer or witness is not required.

(7) (a) If the person whose license is suspended requests a formal review, the department must schedule a hearing to be held within 30 days after the request is received by the department and must notify the person of the date, time, and place of the hearing and shall issue ~~the such~~ person a temporary driving permit for business purposes only to expire on the date that ~~the such~~ review is scheduled to be conducted if the person is otherwise eligible.

(b) The formal review hearing must be held before a hearing officer employed by the department, and the hearing officer may administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas, regulate the course and conduct of the hearing, and make a ruling on the suspension. The department and the person whose license was suspended may subpoena witnesses, and the party requesting the presence of a witness is responsible for paying any witness fees and for notifying in writing the state attorney's office in the appropriate circuit of the issuance of the subpoena. If the person who requests a formal review hearing fails to appear and the hearing officer finds the failure to be without just cause, the right to a formal hearing is waived, and the suspension is sustained. The hearing officer may permit witnesses at the formal review hearing to appear telephonically.

24-00717-12

2012864

(c) A party may seek enforcement of a subpoena under paragraph (b) by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena resides. A failure to comply with an order of the court constitutes contempt of court. However, a person may not be held in contempt while a subpoena is being challenged. The department is not a party to any subpoena enforcement action.

(d) The department must, within 7 days after ~~the a~~ formal review hearing, provide ~~send~~ notice to the person of the hearing officer's decision as to whether sufficient cause exists to sustain, amend, or invalidate the suspension.

(12) The formal review hearing may be conducted upon a review of the reports of ~~the a~~ law enforcement officer or correctional officer, including documents relating to the administration of a breath test or the refusal to take a test. However, as provided in subsection (7), the driver may subpoena the officer or any person who administered ~~the a~~ breath or blood test. The hearing officer may permit witnesses at the formal review hearing to appear telephonically.

(14) Pursuant to s. 322.31, a person may appeal any decision of the department sustaining a suspension of his or her ~~driver driver's~~ license by a petition for writ of certiorari to the circuit court in the county in which the ~~wherein such~~ person resides or in which the ~~wherein a~~ formal or informal review was conducted under s. 322.31. However, an appeal does not stay the suspension. This subsection does not provide for a de novo appeal.

Section 4. Subsections (6) and (7) are added to section

24-00717-12 2012864

697 322.2715, Florida Statutes, to read:

698 322.2715 Ignition interlock device.—

699 (6) Notwithstanding the provisions of s. 322.271 and
 700 322.28(2), upon a second conviction for a violation of the
 701 provisions of s. 316.193, the convicted person may elect to
 702 install an ignition interlock device on all vehicles that are
 703 individually or jointly leased or owned and routinely operated
 704 by the convicted person, in lieu of the 5-year license
 705 revocation required by s. 322.28(2). The ignition interlock
 706 device must be installed for a period of 2 consecutive years,
 707 and must be followed by a third consecutive year, during which
 708 the convicted person is entitled to a driving privilege
 709 restricted to business purposes only, as defined in s.
 710 322.271(1).

711 (7) Notwithstanding the provisions of s. 322.271 and
 712 322.28(2), upon a third conviction for a violation of the
 713 provisions of s. 316.193, the convicted person may elect to
 714 install an ignition interlock device on all vehicles that are
 715 individually or jointly leased or owned and routinely operated
 716 by the convicted person, in lieu of the 10-year license
 717 revocation required by s. 322.28(2). The installation of an
 718 ignition interlock device under this subsection may not occur
 719 until the convicted person has served a 1-year license
 720 revocation period. The ignition interlock device must be
 721 installed for a period of 3 consecutive years, and must be
 722 followed by a period of 2 additional consecutive years, during
 723 which the convicted person is entitled to a driving privilege
 724 restricted to business purposes only, as defined in s.
 725 322.271(1).

24-00717-12 2012864

726 Section 5. Section 322.64, Florida Statutes, is amended to
 727 read:

728 322.64 Holder of commercial driver ~~driver's~~ license;
 729 persons operating a commercial motor vehicle; driving with
 730 unlawful blood-alcohol level or breath-alcohol level; refusal to
 731 submit to breath, urine, or blood test.—

732 (1)(a) A law enforcement officer or correctional officer
 733 shall, on behalf of the department, disqualify from operating a
 734 ~~any~~ commercial motor vehicle a person who, while operating or in
 735 actual physical control of a commercial motor vehicle, is
 736 arrested for a violation of s. 316.193, relating to unlawful
 737 blood-alcohol level or breath-alcohol level, or a person who has
 738 refused to submit to a breath, urine, or blood test ~~authorized~~
 739 ~~by s. 322.63 or s. 316.1932~~ arising out of the operation or
 740 actual physical control of a commercial motor vehicle. A law
 741 enforcement officer or correctional officer shall, on behalf of
 742 the department, disqualify the holder of a commercial driver
 743 ~~driver's~~ license from operating a ~~any~~ commercial motor vehicle
 744 if the licenseholder, while operating or in actual physical
 745 control of a motor vehicle, is arrested for a violation of s.
 746 316.193, ~~relating to unlawful blood-alcohol level or breath-~~
 747 ~~alcohol level~~, or refused to submit to a breath, urine, or blood
 748 test ~~authorized by s. 322.63 or s. 316.1932~~. Upon
 749 disqualification of the person, the officer shall take the
 750 person's driver ~~driver's~~ license and issue the person a 10-day
 751 temporary permit for the operation of noncommercial vehicles
 752 only if the person is otherwise eligible for the driving
 753 privilege and shall issue the person a notice of
 754 disqualification. If the person has been given a blood, breath,

24-00717-12 2012864

or urine test ~~and~~, the results of the test ~~which~~ are not available to the officer at the time of the arrest, the agency employing the officer shall transmit such results to the department within 5 days after receipt of the results. If the department then determines that the person had a blood-alcohol level or breath-alcohol level of 0.08 or higher, the department shall disqualify the person from operating a commercial motor vehicle pursuant to subsection (3).

(b) For purposes of determining the period of disqualification described in 49 C.F.R. s. 383.51, the disqualification under paragraph (a) shall be treated as conviction.

(c) ~~(b)~~ The disqualification under paragraph (a) shall be pursuant to, and the notice of disqualification shall inform the driver of, the following:

1.a. The driver refused to submit to a lawful breath, blood, or urine test and he or she is disqualified from operating a commercial motor vehicle for ~~a period of~~ 1 year, for a first refusal, or permanently, if he or she has previously been disqualified under this section; or

b. The driver was driving or was in actual physical control of a commercial motor vehicle, or any motor vehicle if the driver holds a commercial driver ~~driver's~~ license, had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher, and his or her driving privilege shall be disqualified for ~~a period of~~ 1 year for a first offense, or permanently ~~disqualified~~ if his or her driving privilege has been previously disqualified under this section.

2. The disqualification period for operating a commercial

24-00717-12 2012864

vehicle begins ~~vehicles shall commence~~ on the date of issuance of the notice of disqualification.

3. The driver may request a formal or informal review of the disqualification by the department within 10 days after the date of issuance of the notice of disqualification.

4. The temporary permit issued at the time of disqualification expires at midnight of the 10th day following the date of disqualification.

5. The driver may submit to the department any material ~~materials~~ relevant to the disqualification.

(2) Except as provided in paragraph (1)(a), the law enforcement officer shall forward to the department, within 5 days after the date of the issuance of the notice of disqualification, a copy of the notice of disqualification issued to the person; ~~the driver~~ driver's license of the person disqualified; ~~and~~ an affidavit stating the officer's grounds for belief that the person disqualified was operating or was in actual physical control of a commercial motor vehicle, or holds a commercial driver ~~driver's~~ license, and had an unlawful blood-alcohol or breath-alcohol level; the results of any breath, ~~or~~ blood, or urine test or an affidavit stating that a breath, blood, or urine test was requested by the ~~a~~ law enforcement officer or correctional officer and that the person arrested refused to submit; ~~a copy of the notice of disqualification issued to the person;~~ and the officer's description of the person's field sobriety test, if any. The failure of the officer to submit materials within the 5-day period specified in this subsection or subsection (1) does not affect the department's ability to consider any evidence submitted at or before ~~prior to~~

24-00717-12 2012864

the hearing. The officer may also submit a copy of a videotape of the field sobriety test or the attempt to administer such test and a copy of the crash report, if any. Notwithstanding s. 316.066, the crash report shall be considered by the hearing officer. All materials may be submitted in electronic form.

(3) If the department determines that the person arrested should be disqualified from operating a commercial motor vehicle pursuant to this section and if the notice of disqualification has not already been served upon the person by the a law enforcement officer or correctional officer as provided in subsection (1), the department shall issue a notice of disqualification and, unless the notice is mailed pursuant to s. 322.251, a temporary permit that ~~which~~ expires 10 days after the date of issuance if the driver is otherwise eligible.

(4) If the person disqualified requests an informal review pursuant to subparagraph (1)(c)3. ~~(1)(b)3.~~, the department shall conduct the informal review by a hearing officer employed by the department. The ~~Such~~ informal review hearing shall consist solely of an examination by the department of the materials submitted by the a law enforcement officer or correctional officer ~~and by the person disqualified~~, and the presence of the ~~an~~ officer or a witness is not required.

(5) After completion of the informal review, notice of the department's decision sustaining, amending, or invalidating the disqualification must be provided to the person. The ~~such~~ notice must be mailed to the person at the last known address shown on the department's records, and to the address provided in the law enforcement officer's report if the ~~such~~ address differs from the address of record, within 21 days after the expiration of

24-00717-12 2012864

the temporary permit issued pursuant to subsection (1) or subsection (3).

(6) (a) If the person disqualified requests a formal review, the department must schedule a hearing to be held within 30 days after the ~~such~~ request is received by the department and must notify the person of the date, time, and place of the hearing.

(b) The ~~such~~ formal review hearing shall be held before a hearing officer employed by the department, and the hearing officer may ~~shall be authorized to~~ administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas for the officers and witnesses identified in documents as provided in subsection (2), regulate the course and conduct of the hearing, and make a ruling on the disqualification. The department and the person disqualified may subpoena witnesses, and the party requesting the presence of a witness is ~~shall be~~ responsible for the payment of any witness fees. If the person who requests a formal review hearing fails to appear and the hearing officer finds such failure to be without just cause, the right to a formal hearing is waived. The hearing officer may permit witnesses at the formal review hearing to appear telephonically.

(c) A party may seek enforcement of a subpoena under paragraph (b) by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena resides or by filing a motion for enforcement in any criminal court case resulting from the driving or actual physical control of the motor vehicle that gave rise to the disqualification under this section. A failure to comply with an order of the court shall result in a finding

24-00717-12 2012864
 of contempt of court. However, a person ~~is shall~~ not be in
 contempt while a subpoena is being challenged. The department is
~~not a party to any subpoena enforcement action.~~

(d) The department must, within 7 working days after ~~the a~~
 formal review hearing, send notice to the person of the hearing
 officer's decision as to whether sufficient cause exists to
 sustain, amend, or invalidate the disqualification.

(7) In a formal review hearing under subsection (6) or an
 informal review hearing under subsection (4), the hearing
 officer shall determine by a preponderance of the evidence
 whether sufficient cause exists to sustain, amend, or invalidate
 the disqualification. Notwithstanding s. 316.1932, the hearing
officer may not consider the lawfulness of the arrest and shall
limit the scope of the review ~~shall be limited~~ to the following
 issues:

(a) If the person was disqualified from operating a
 commercial motor vehicle for driving with a ~~an unlawful~~ blood-
 alcohol level or breath-alcohol level of 0.08 or higher:

1. Whether the arresting law enforcement officer had
 probable cause to believe that the person was driving or was in
 actual physical control of a commercial motor vehicle, or any
 motor vehicle if the driver holds a commercial driver ~~driver's~~
 license, in this state while he or she had any alcohol, chemical
substance ~~substances~~, or controlled substance ~~substances~~ in his
 or her body.

2. Whether the person had a ~~an unlawful~~ blood-alcohol level
 or breath-alcohol level of 0.08 or higher.

(b) If the person was disqualified from operating a
 commercial motor vehicle for refusal to submit to a breath,

24-00717-12 2012864
 blood, or urine test:

1. Whether the law enforcement officer had probable cause
 to believe that the person was driving or was in actual physical
 control of a commercial motor vehicle, or any motor vehicle if
 the driver holds a commercial driver ~~driver's~~ license, in this
 state while he or she had any alcohol, chemical substance
~~substances~~, or controlled substance ~~substances~~ in his or her
 body.

2. Whether the person refused to submit to the test after
 being requested to do so by the a law enforcement officer or
 correctional officer.

3. Whether the person was told that if he or she refused to
 submit to such test, he or she would be disqualified from
 operating a commercial motor vehicle for ~~a period of~~ 1 year or,
 if previously disqualified under this section, permanently.

(8) Based on the determination of the hearing officer
 pursuant to subsection (7) for both informal hearings under
 subsection (4) and formal hearings under subsection (6), the
 department shall:

(a) Sustain the disqualification for ~~a period of~~ 1 year for
 a first refusal, or permanently if the such person has been
 previously disqualified from operating a commercial motor
 vehicle under this section. The disqualification period begins
~~commences~~ on the date of the issuance of the notice of
 disqualification.

(b) Sustain the disqualification:

1. For ~~a period of~~ 1 year if the person was driving or was
 in actual physical control of a commercial motor vehicle, or any
 motor vehicle if the driver holds a commercial driver ~~driver's~~

24-00717-12 2012864

license, and had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher; or

2. Permanently if the person has been previously disqualified from operating a commercial motor vehicle under this section or his or her driving privilege has been previously suspended for driving or being in actual physical control of a commercial motor vehicle, or any motor vehicle if the driver holds a commercial driver ~~driver's~~ license, and had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher.

The disqualification period begins ~~commences~~ on the date of the issuance of the notice of disqualification.

(9) A request for a formal review hearing or an informal review hearing does ~~shall~~ not stay the disqualification. If the department fails to schedule the formal review hearing to be held within 30 days after receipt of the request therefor, the department shall invalidate the disqualification. If the scheduled hearing is continued at the department's initiative, the department shall issue a temporary driving permit limited to noncommercial vehicles which is valid until the hearing is conducted if the person is otherwise eligible for the driving privilege. The ~~Such~~ permit may ~~shall~~ not be issued to a person who sought and obtained a continuance of the hearing. The temporary permit issued under this subsection grants a driving privilege restricted to employment purposes only, as defined in s. 322.271 ~~shall authorize driving for business purposes only.~~

(10) A person who is disqualified from operating a commercial motor vehicle under subsection (1) or subsection (3) is eligible for issuance of a license for business or employment

24-00717-12 2012864

purposes only under s. 322.271 if the person is otherwise eligible for the driving privilege. However, such business or employment purposes license does ~~shall~~ not authorize the driver to operate a commercial motor vehicle.

(11) The formal review hearing may be conducted upon a review of the reports of the ~~a~~ law enforcement officer or ~~a~~ correctional officer, including documents relating to the administration of a breath test or blood test or the refusal to take a breath, blood, or urine ~~either~~ test. However, as provided in subsection (6), the driver may subpoena the officer or any person who administered or analyzed the ~~a~~ breath or blood test. The hearing officer may permit witnesses at the formal review hearing to appear telephonically.

(12) The formal review hearing and the informal review hearing are exempt from the provisions of chapter 120. The department may ~~is authorized to~~ adopt rules for the conduct of reviews under this section.

(13) Pursuant to s. 322.31, a person may appeal any decision of the department sustaining the disqualification from operating a commercial motor vehicle by a petition for writ of certiorari to the circuit court in the county in which the ~~wherein such person resides or wherein a formal or informal review was conducted pursuant to s. 322.31~~. However, an appeal does ~~shall~~ not stay the disqualification. This subsection does ~~shall not be construed to~~ provide for a de novo appeal.

(14) The decision of the department under this section may ~~shall~~ not be considered in any trial for a violation of s. 316.193, s. 322.61, or s. 322.62, and a ~~nor shall any~~ written statement submitted by a person in his or her request for

24-00717-12

2012864

987 departmental review under this section may not be admitted be
988 ~~admissible~~ into evidence against him or her in any such trial.
989 The disposition of any related criminal proceeding may
990 ~~proceedings shall~~ not affect a disqualification imposed pursuant
991 to this section.

992 (15) This section does not preclude the suspension of the
993 driving privilege pursuant to s. 322.2615. The driving privilege
994 of a person who has been disqualified from operating a
995 commercial motor vehicle ~~also~~ may also be suspended for a
996 violation of s. 316.193.

997 Section 6. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12
Meeting Date

Topic DUI - Ignition Interlocks Bill Number 864
Name Kristen Allen Amendment Barcode _____
Job Title State Victim Services Manager (if applicable)
Address 1018 Thomasville Rd, #101 Phone 850-681-0061
Tallahassee, FL 32303 E-mail Kristen.allen@madd.org
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing MADD Florida

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)

2-9-12

Meeting Date

Topic Ignition Interlock

Bill Number SB-864
(if applicable)

Name Jerry Fifer

Amendment Barcode _____
(if applicable)

Job Title STATE SERVICE MGR. Ignition Interlock

Address 308 Shorewood Ct.

Phone 850-698-1353

Pensacola FL 32507
City State Zip

E-mail j.fifer@lifesafef.com

Speaking: ☐ For ☐ Against ☒ Information

Representing LifeSafer Ignition Interlock

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)

APPEARANCE RECORD

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

2-9-12

Meeting Date

Available

For technical informational purposes only

Topic SB 864

Bill Number 864
(if applicable)

Name Jerry Stanton

Amendment Barcode _____
(if applicable)

Job Title Public Policy Director LifeSaver Interlock

Address 3419 E. Terrace St.
Street

Phone _____

Seattle WA 98122
City State Zip

E-mail JStanton@lifesaver.com

Speaking: ☒ For ☐ Against ☒ Information only if needed

Representing Life Saver

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)

2-9-12

Meeting Date

Topic DUI - Ignition Interlocks Bill Number 3B864
Name CONNIE Russell Amendment Barcode _____ (if applicable)
Job Title Volunteer
Address 714 Rigbins Rd Phone 407-222-6090
Street
Tallahassee FL 32308 E-mail Beard.Connrie @
City State Zip gmail.com
Speaking: ☒ For ☐ Against ☐ Information
Representing MADD FLORIDA
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)

2-9-12
Meeting Date

Topic SB 864

Bill Number 864
(if applicable)

Name Patrick Bell

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address P.O. Box 10242

Phone 850-224-8282

Tallahassee FL 32302
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing  Life Saver

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)

2/9/12

Meeting Date

Topic DUI

Bill Number SB 864
(if applicable)

Name Bill Barrett

Amendment Barcode _____
(if applicable)

Job Title _____

Address 4001 Hudson Ter

Phone 321-403-6410

Street

Tampa

FL

State

33618

Zip

E-mail bill.spz@att.blackberry.net

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Parking Enforcement

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)

9 FEB 2012
Meeting Date

Topic ignition interlock

Bill Number 864
(if applicable)

Name Anna Redgate

Amendment Barcode _____
(if applicable)

Job Title MOTHER

Address 1612 SE 18th AVE
Street

Phone (352) 207-1911

Ocala FL 34471
City State Zip

E-mail anna@youimpact.com

Speaking: ☒ For ☐ Against ☐ Information

Representing MADD

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

Tallahassee, Florida 32399-1100

SENATOR THAD ALTMAN
24th District

COMMITTEES:

Military Affairs, Space, and Domestic Security,
Chair
Budget - Subcommittee on Finance and Tax,
Vice Chair
Budget
Budget - Subcommittee on Higher Education
Appropriations
Communications, Energy, and Public Utilities
Education Pre-K - 12
Higher Education
Reapportionment
Regulated Industries

December 7, 2011

The Honorable Greg Evers, Chair
Senate Committee on Criminal Justice
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Evers:

I respectfully request that SB 864, related to *Driving Under the Influence*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman". The signature is written in a cursive, flowing style.

Thad Altman
TA/rk

CC: Amanda Cannon, Staff Director, 510 Knott Building

REPLY TO:

- ☐ 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- ☐ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5053

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 1172

INTRODUCER: Criminal Justice Committee and Senator Detert

SUBJECT: Criminal Conduct

DATE: February 9, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			JU	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" 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 changes the organizational structure of s. 827.03, F.S., the criminal child abuse statute, by creating a definition section, followed by an offenses section that describes the conduct proscribed by the statute and the applicable penalties.

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

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

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

II. Present Situation:

Criminal Child Abuse Statute

Section 827.03, F.S., Florida's criminal child abuse statute, provides as follows.

"Child Abuse" is defined to mean:

- Intentionally inflicting physical or mental injury upon a child;
- Committing an intentional act reasonably expected to result in physical or mental injury to a child, or;
- Actively encouraging the commission of an act resulting in physical or mental injury to a child.

It is a third degree felony offense to knowingly or willfully abuse a child without causing great bodily harm, permanent disability, or permanent disfigurement.¹

"Aggravated child abuse" is defined to mean:

- Committing aggravated battery on a child;
- Willfully torturing, maliciously punishing, or willfully and unlawfully caging a child; or
- Knowingly or willfully abusing a child, thereby causing great bodily harm, permanent disability, or permanent disfigurement.

It is a first degree felony to commit aggravated child abuse.²

Mental Injury

In recent years, the criminal child abuse statute has been challenged as unconstitutionally vague for its failure to define the term "mental injury." In 2002, in *DuFresne v. State*, the Florida Supreme Court considered this issue. In *DuFresne*, the Court acknowledged that "in order to withstand a vagueness challenge, a statute must provide persons of common intelligence and understanding adequate notice of the proscribed conduct."³ The Court noted, however, that

. . . the legislature's failure to define a statutory term does not in and of itself render a penal provision unconstitutionally vague. In the absence of a statutory definition, resort may be had to case law or related statutory provisions which define the term . . . [internal citations omitted]⁴

¹ A third degree felony is punishable by potentially serving up to 5 years in prison and paying up to a \$5,000 fine. Sections 775.082 and 775.083, F.S.

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

³ *DuFresne v. State*, 826 So.2d 272, 275 (Fla. 2002).

⁴ *Id.* at 275.

The Court found that the child protection provisions of ch. 39, F.S., were “plainly interrelated” with the provisions of the criminal child abuse statute and that, as such, the criminal child abuse statute was not unconstitutionally vague because the term “mental injury” was adequately defined in ch. 39, F.S.⁵ The Court held, “While it may obviously be preferable for the Legislature to place the appropriate definition in the same statute, citizens should be on notice that controlling definitions may be contained in other related statutes.”⁶

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

Expert Testimony

Florida’s evidence code specifically addresses expert testimony. Section 90.702, F.S., provides that if scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion. However, the opinion is admissible only if it can be applied to evidence at trial. The determination of a witness’s qualifications to express an expert opinion is within the discretion of the trial judge, whose decision will not be reversed absent a clear showing of error.⁷ The weight and credibility given to expert testimony is a matter for the fact finder.⁸

In regards to medical expert testimony, courts have held that whether a doctor is qualified to testify as an expert depends upon whether the doctor is known to have such skill, knowledge, or experience with respect to the subject matter about which the doctor is called to testify that it appears to the trial court that the doctor’s opinion will aid a jury in resolving the ultimate issue of fact.⁹ For example, Florida’s Fourth District Court of Appeal held that the testimony of a physician which outlined her formal training and experience and her licensing as a physician in two states with a specialty in child and adolescent psychiatry established her qualifications to render an opinion on whether the victim of alleged sexual assault was suffering from posttraumatic stress syndrome.¹⁰

Outside of the requirements contained in s. 90.702, F.S., Florida law does not place limitations as to who can provide expert testimony in criminal child abuse cases. In other words, anyone can provide expert testimony in such cases so long as the trial judge determines that the person is qualified to express an expert opinion.

Victim Assistance

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

⁵ *Id.* at 278.

⁶ *Id.* at 279.

⁷ *See, Anderson v. State*, 863 So.2d 169 (Fla.2003).

⁸ *See, Horowitz v. American Motorist Inc. Co.*, 343 So.2d 1305 (Fla. 2nd DCA 1977).

⁹ *See, Pearson v. State*, 254 So.2d 573 (Fla. 3rd DCA 1971).

¹⁰ *Kruse v. State*, 483 So.2d 1383 (Fla. 4th DCA 1986).

- A person who suffers personal physical injury or death as a direct result of a crime;
- A person less than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured; or
- A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.¹¹

Also for purposes of the Compensation Act, the term “crime” is defined to include “a felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death . . .”¹²

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

- Victim;
- Intervener;
- Surviving spouse, parent or guardian, sibling, or child of a deceased victim or intervener; and
- Any other person who is dependent for his or her principal support upon a deceased victim or intervener.¹³

The Florida Office of the Attorney General’s Division of Victim Services¹⁴ serves as an advocate for crime victims and victims’ rights and administers a compensation program to ensure financial assistance for innocent victims of crime.¹⁵ Injured crime victims may be eligible for financial assistance for medical care, lost income, funeral expenses and other out-of-pocket expenses directly related to the injury.¹⁶ Payment is made from the Crimes Compensation Trust Fund (Trust Fund).¹⁷ The Office of Attorney General may adopt rules establishing compensation award limits: however, compensation awards to eligible victims are statutorily limited as follows:

- No more than \$10,000 for treatment;
- No more than \$10,000 for continuing or periodic mental health care of a minor victim whose normal emotional development is adversely affected by being the victim of a crime;
- A total of \$25,000 for all compensable costs; or
- Fifty thousand dollars when there is a finding that a victim has suffered catastrophic injury.¹⁸

¹¹ Section 960.03(14), F.S.

¹² Section 960.03(3), F.S.

¹³ Section 960.065(1), F.S.

¹⁴ The Division of Victim Services is housed within the Office of Attorney General/Department of Legal Affairs.

¹⁵ See <http://myfloridalegal.com/victims> (last visited February 1, 2012).

¹⁶ *Id.*

¹⁷ Section 960.21, F.S.

¹⁸ Section 960.13(9)(a), F.S.

III. Effect of Proposed Changes:

Criminal Child Abuse Statute

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

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

The bill also creates a new “expert testimony” subsection in s. 827.03, F.S., specifying the following requirements:

- A physician may not provide expert testimony in a criminal child abuse case unless he or she is a physician licensed under chapters 458 or 459, F.S., or has obtained certification as an expert witness pursuant to s. 458.3175, F.S.¹⁹
- A physician may not provide expert testimony regarding mental injury unless he or she is a physician licensed under chapters 458 or 459, F.S., who is board certified in psychiatry, or has obtained certification as an expert witness pursuant to s. 458.3175.
- A psychologist may not give expert testimony regarding mental injury unless the psychologist is licensed under chapter 490, F.S.

The bill specifies that these expert testimony requirements only apply to criminal court cases, not family court or dependency court cases.

Victim Assistance

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

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

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

¹⁹ Section 458.3175, F.S., requires the Department of Health to issue a certificate authorizing a physician who holds an active and valid license to practice medicine in another state or a province of Canada to provide expert testimony in this state, if the physician submits a registration application and an application fee.

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

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

The bill expands the number of persons eligible to receive crime compensation awards to include minors who suffer psychiatric or psychological injury as the result of an offense. The Office of Attorney General indicates that “unless Victims Compensation can estimate the number of persons under the age of 18 who received a psychiatric or psychological injury and the amount of assistance they will require, a fiscal estimate is difficult. Without additional data, the fiscal impact on the Crimes Compensation trust fund would be indeterminate but potentially very significant.”²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁰ E-mail from Legislative Affairs in the Florida Office of the Attorney General, dated January 23, 2012, on file with the Senate Criminal Justice Committee staff.

VIII. Additional Information:

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

CS by Criminal Justice on February 9, 2012:

Specifies that physicians and psychologists can only provide expert testimony in criminal child abuse cases if they meet the following requirements:

- A physician may not provide expert testimony unless he or she is a physician licensed under chapters 458 or 459, F.S., or has obtained certification as an expert witness pursuant to s. 458.3175, F.S.
- A physician may not provide expert testimony regarding mental injury unless he or she is a physician licensed under chapters 458 or 459, F.S., who is board certified in psychiatry, or has obtained certification as an expert witness pursuant to s. 458.3175, F.S.
- A psychologist may not give expert testimony regarding mental injury unless the psychologist is licensed under chapter 490, F.S.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 827.03, Florida Statutes, is amended to
read:

827.03 Abuse, aggravated abuse, and neglect of a child;
penalties.—

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

(a) "Aggravated child abuse" occurs when a person:

1. Commits aggravated battery on a child;

2. Willfully tortures, maliciously punishes, or willfully



661700

and unlawfully cages a child; or

3. Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.

(b) "Child abuse" means:

1. (a) Intentional infliction of physical or mental injury upon a child;

2. (b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or

3. (c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

~~A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~(2) "Aggravated child abuse" occurs when a person:~~

~~(a) Commits aggravated battery on a child;~~

~~(b) Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or~~

~~(c) Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.~~

~~A person who commits aggravated child abuse commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(c) "Maliciously" means wrongfully, intentionally, and



661700

without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward the child for any valid reason and that the primary purpose of the acts was to cause the victim unjustifiable pain or injury.

(d) "Mental injury" means injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony.

~~(e)(3)(a)~~ "Neglect of a child" means:

1. A caregiver's failure or omission to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or

2. A caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

Except as otherwise provided in this section, neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.

(2) OFFENSES.—

(a) A person who commits aggravated child abuse commits a



661700

felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who willfully or by culpable negligence neglects a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) ~~(e)~~ A person who willfully or by culpable negligence neglects a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) EXPERT TESTIMONY.—

(a) Except as provided in paragraph (b), a physician may not provide expert testimony in a criminal child abuse case unless the physician is a physician licensed under chapter 458 or chapter 459 or has obtained certification as an expert witness pursuant to s. 458.3175.

(b) A physician may not provide expert testimony in a criminal child abuse case regarding mental injury unless the physician is a physician licensed under chapter 458 or chapter 459 who is board certified in psychiatry or has obtained certification as an expert witness pursuant to s. 458.3175.

(c) A psychologist may not give expert testimony in a



661700

criminal child abuse case regarding mental injury unless the
psychologist is licensed under chapter 490.

(d) The expert testimony requirements of this subsection
apply only to criminal child abuse cases and not to family court
or dependency court cases.

~~(4) For purposes of this section, "maliciously" means
wrongfully, intentionally, and without legal justification or
excuse. Maliciousness may be established by circumstances from
which one could conclude that a reasonable parent would not have
engaged in the damaging acts toward the child for any valid
reason and that the primary purpose of the acts was to cause the
victim unjustifiable pain or injury.~~

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

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

(1) As used in this act:

(d) "Violent career criminal" means a defendant for whom
the court must impose imprisonment pursuant to paragraph (4) (d),
if it finds that:

1. The defendant has previously been convicted as an adult
three or more times for an offense in this state or other
qualified offense that is:

a. Any forcible felony, as described in s. 776.08;

b. Aggravated stalking, as described in s. 784.048(3) and
(4);

c. Aggravated child abuse, as described in s. 827.03(2) (a);



661700

d. Aggravated abuse of an elderly person or disabled adult,
as described in s. 825.102(2);

e. Lewd or lascivious battery, lewd or lascivious
molestation, lewd or lascivious conduct, or lewd or lascivious
exhibition, as described in s. 800.04 or s. 847.0135(5);

f. Escape, as described in s. 944.40; or

g. A felony violation of chapter 790 involving the use or
possession of a firearm.

2. The defendant has been incarcerated in a state prison or
a federal prison.

3. The primary felony offense for which the defendant is to
be sentenced is a felony enumerated in subparagraph 1. and was
committed on or after October 1, 1995, and:

a. While the defendant was serving a prison sentence or
other sentence, or court-ordered or lawfully imposed supervision
that is imposed as a result of a prior conviction for an
enumerated felony; or

b. Within 5 years after the conviction of the last prior
enumerated felony, or within 5 years after the defendant's
release from a prison sentence, probation, community control,
control release, conditional release, parole, or court-ordered
or lawfully imposed supervision or other sentence that is
imposed as a result of a prior conviction for an enumerated
felony, whichever is later.

4. The defendant has not received a pardon for any felony
or other qualified offense that is necessary for the operation
of this paragraph.

5. A conviction of a felony or other qualified offense
necessary to the operation of this paragraph has not been set



661700

aside in any postconviction proceeding.

Section 3. Subsection (1) of section 775.0877, Florida Statutes, is amended to read:

775.0877 Criminal transmission of HIV; procedures; penalties.—

(1) In any case in which a person has been convicted of or has pled nolo contendere or guilty to, regardless of whether adjudication is withheld, any of the following offenses, or the attempt thereof, which offense or attempted offense involves the transmission of body fluids from one person to another:

(a) Section 794.011, relating to sexual battery;

(b) Section 826.04, relating to incest;

(c) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;

(d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d), relating to assault;

(e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault;

(f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery;

(g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a), relating to aggravated battery;

(h) Section 827.03(2)(c)~~(1)~~, relating to child abuse;

(i) Section 827.03(2)(a), relating to aggravated child abuse;

(j) Section 825.102(1), relating to abuse of an elderly person or disabled adult;

(k) Section 825.102(2), relating to aggravated abuse of an



661700

elderly person or disabled adult;

(l) Section 827.071, relating to sexual performance by person less than 18 years of age;

(m) Sections 796.03, 796.07, and 796.08, relating to prostitution; or

(n) Section 381.0041(11)(b), relating to donation of blood, plasma, organs, skin, or other human tissue,

the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(3)(h)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(n) for which she or he was convicted or to which she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

Section 4. Subsection (3) of section 782.07, Florida Statutes, is amended to read:

782.07 Manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.—

(3) A person who causes the death of any person under the age of 18 by culpable negligence under s. 827.03(2)(b) ~~(3)~~ commits aggravated manslaughter of a child, a felony of the



661700

first degree, punishable as provided in s. 775.082, s. 775.083,
or s. 775.084.

Section 5. Paragraphs (f), (g), and (i) of subsection (3)
of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking
chart.—

(3) OFFENSE SEVERITY RANKING CHART

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051(3)	2nd	Knowing forgery of pedigree papers.
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.



661700

231	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
232	784.041	3rd	Felony battery; domestic battery by strangulation.
233	784.048(3)	3rd	Aggravated stalking; credible threat.
234	784.048(5)	3rd	Aggravated stalking of person under 16.
235	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
236	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
237	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
238	784.081(2)	2nd	Aggravated assault on specified official or employee.
239	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
240	784.083(2)	2nd	Aggravated assault on code inspector.
241	787.02(2)	3rd	False imprisonment; restraining with



661700

purpose other than those in s. 787.01.

790.115(2)(d) 2nd Discharging firearm or weapon on school property.

790.161(2) 2nd Make, possess, or throw destructive device with intent to do bodily harm or damage property.

790.164(1) 2nd False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.

790.19 2nd Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.

794.011(8)(a) 3rd Solicitation of minor to participate in sexual activity by custodial adult.

794.05(1) 2nd Unlawful sexual activity with specified minor.

800.04(5)(d) 3rd Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.

800.04(6)(b) 2nd Lewd or lascivious conduct; offender 18 years of age or older.



661700

251	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
252	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
253	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
254	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
255	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
256	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
257	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
258	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
259	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.



661700

260

825.102(1) 3rd Abuse of an elderly person or disabled adult.

261

825.102(3)(c) 3rd Neglect of an elderly person or disabled adult.

262

825.1025(3) 3rd Lewd or lascivious molestation of an elderly person or disabled adult.

263

825.103(2)(c) 3rd Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.

264

827.03(2)(c) 3rd Abuse of a child.
~~827.03(1)~~

265

827.03(2)(d) 3rd Neglect of a child.
~~827.03(3)(e)~~

266

827.071(2) & 2nd Use or induce a child in a sexual
(3) performance, or promote or direct such performance.

267

836.05 2nd Threats; extortion.

268

836.10 2nd Written threats to kill or do bodily injury.

843.12 3rd Aids or assists person to escape.



661700

269

847.011 3rd Distributing, offering to distribute, or
 possessing with intent to distribute
 obscene materials depicting minors.

270

847.012 3rd Knowingly using a minor in the
 production of materials harmful to
 minors.

271

847.0135(2) 3rd Facilitates sexual conduct of or with a
 minor or the visual depiction of such
 conduct.

272

914.23 2nd Retaliation against a witness, victim,
 or informant, with bodily injury.

273

944.35(3)(a)2. 3rd Committing malicious battery upon or
 inflicting cruel or inhuman treatment on
 an inmate or offender on community
 supervision, resulting in great bodily
 harm.

274

944.40 2nd Escapes.

275

944.46 3rd Harboring, concealing, aiding escaped
 prisoners.

276

944.47(1)(a)5. 2nd Introduction of contraband (firearm,
 weapon, or explosive) into correctional



661700

facility.

951.22 (1) 3rd Intoxicating drug, firearm, or weapon
introduced into county facility.

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027 (1) (b)	1st	Accident involving death, failure to stop; leaving scene.
316.193 (3) (c) 2.	3rd	DUI resulting in serious bodily injury.
316.1935 (3) (b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35 (3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration,



661700

permanent disability, or death.

409.920 3rd Medicaid provider fraud; \$10,000 or
(2) (b) 1.a. less.

409.920 2nd Medicaid provider fraud; more than
(2) (b) 1.b. \$10,000, but less than \$50,000.

456.065 (2) 3rd Practicing a health care profession
without a license.

456.065 (2) 2nd Practicing a health care profession
without a license which results in
serious bodily injury.

458.327 (1) 3rd Practicing medicine without a license.

459.013 (1) 3rd Practicing osteopathic medicine without
a license.

460.411 (1) 3rd Practicing chiropractic medicine
without a license.

461.012 (1) 3rd Practicing podiatric medicine without a
license.

462.17 3rd Practicing naturopathy without a
license.



661700

296	463.015(1)	3rd	Practicing optometry without a license.
297	464.016(1)	3rd	Practicing nursing without a license.
298	465.015(2)	3rd	Practicing pharmacy without a license.
299	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
300	467.201	3rd	Practicing midwifery without a license.
301	468.366	3rd	Delivering respiratory care services without a license.
302	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
303	483.901(9)	3rd	Practicing medical physics without a license.
304	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
305	484.053	3rd	Dispensing hearing aids without a license.
	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained



661700

exceeded \$50,000 and there were five or more victims.

560.123(8)(b)1. 3rd Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.

560.125(5)(a) 3rd Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.

655.50(10)(b)1. 3rd Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.

775.21(10)(a) 3rd Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.

775.21(10)(b) 3rd Sexual predator working where children regularly congregate.

775.21(10)(g) 3rd Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.

782.051(3) 2nd Attempted felony murder of a person by



661700

a person other than the perpetrator or
the perpetrator of an attempted felony.

782.07(1) 2nd Killing of a human being by the act,
procurement, or culpable negligence of
another (manslaughter).

782.071 2nd Killing of a human being or viable
fetus by the operation of a motor
vehicle in a reckless manner (vehicular
homicide).

782.072 2nd Killing of a human being by the
operation of a vessel in a reckless
manner (vessel homicide).

784.045(1)(a)1. 2nd Aggravated battery; intentionally
causing great bodily harm or
disfigurement.

784.045(1)(a)2. 2nd Aggravated battery; using deadly
weapon.

784.045(1)(b) 2nd Aggravated battery; perpetrator aware
victim pregnant.

784.048(4) 3rd Aggravated stalking; violation of
injunction or court order.



661700

321	784.048 (7)	3rd	Aggravated stalking; violation of court order.
322	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
323	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
324	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
325	784.081 (1)	1st	Aggravated battery on specified official or employee.
326	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
327	784.083 (1)	1st	Aggravated battery on code inspector.
328	790.07 (4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07 (1) or (2).
329	790.16 (1)	1st	Discharge of a machine gun under specified circumstances.
	790.165 (2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.



661700

330	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
331	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
332	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
333	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
334	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
335	796.03	2nd	Procuring any person under 16 years for prostitution.
336	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.



661700

337	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
338	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
339	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
340	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
341	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
342	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
343	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
344	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.



661700

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812.014(2)(b)3. 2nd Property stolen, emergency medical
equipment; 2nd degree grand theft.

346

812.014(2)(b)4. 2nd Property stolen, law enforcement
equipment from authorized emergency
vehicle.

347

812.0145(2)(a) 1st Theft from person 65 years of age or
older; \$50,000 or more.

348

812.019(2) 1st Stolen property; initiates, organizes,
plans, etc., the theft of property and
traffics in stolen property.

349

812.131(2)(a) 2nd Robbery by sudden snatching.

350

812.133(2)(b) 1st Carjacking; no firearm, deadly weapon,
or other weapon.

351

817.234(8)(a) 2nd Solicitation of motor vehicle accident
victims with intent to defraud.

352

817.234(9) 2nd Organizing, planning, or participating
in an intentional motor vehicle
collision.

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817.234(11)(c) 1st Insurance fraud; property value
\$100,000 or more.



661700

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817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103 (2) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
<u>827.03 (2)</u> 827.03 (3) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.



661700

838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3) (a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1) (c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.



661700

893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine
or other drug prohibited under s.
893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4., within 1,000 feet
of property used for religious services
or a specified business site.

893.13(4)(a) 1st Deliver to minor cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4. drugs).

893.135(1)(a)1. 1st Trafficking in cannabis, more than 25
lbs., less than 2,000 lbs.

893.135 (1)(b)1.a. 1st Trafficking in cocaine, more than 28
grams, less than 200 grams.

893.135 (1)(c)1.a. 1st Trafficking in illegal drugs, more than
4 grams, less than 14 grams.

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

893.135(1)(e)1. 1st Trafficking in methaqualone, more than
200 grams, less than 5 kilograms.

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



661700

378	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
379	893.135 (1) (h) 1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
380	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
381	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
382	893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
383	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
384	896.104 (4) (a) 1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
	943.0435 (4) (c)	2nd	Sexual offender vacating permanent residence; failure to comply with



661700

reporting requirements.

943.0435(8) 2nd Sexual offender; remains in state after
indicating intent to leave; failure to
comply with reporting requirements.

943.0435(9)(a) 3rd Sexual offender; failure to comply with
reporting requirements.

943.0435(13) 3rd Failure to report or providing false
information about a sexual offender;
harbor or conceal a sexual offender.

943.0435(14) 3rd Sexual offender; failure to report and
reregister; failure to respond to
address verification.

944.607(9) 3rd Sexual offender; failure to comply with
reporting requirements.

944.607(10)(a) 3rd Sexual offender; failure to submit to
the taking of a digitized photograph.

944.607(12) 3rd Failure to report or providing false
information about a sexual offender;
harbor or conceal a sexual offender.

944.607(13) 3rd Sexual offender; failure to report and
reregister; failure to respond to



661700

address verification.

985.4815(10) 3rd Sexual offender; failure to submit to
the taking of a digitized photograph.

985.4815(12) 3rd Failure to report or providing false
information about a sexual offender;
harbor or conceal a sexual offender.

985.4815(13) 3rd Sexual offender; failure to report and
reregister; failure to respond to
address verification.

(i) LEVEL 9

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



661700

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
exceeding \$100,000.

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

775.0844 1st Aggravated white collar crime.

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

782.04(3) 1st,PBL Accomplice to murder in connection
with arson, sexual battery, robbery,
burglary, and other specified
felonies.

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



661700

410	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
411	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
412	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
413	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
414	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.
415	790.161	1st	Attempted capital destructive device offense.
416	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
417	794.011(2)	1st	Attempted sexual battery; victim less



661700

than 12 years of age.

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

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

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

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

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

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

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

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



661700

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.

827.03 (2) (a) 1st Aggravated child abuse.

~~827.03 (2)~~

847.0145 (1) 1st Selling, or otherwise transferring
custody or control, of a minor.

847.0145 (2) 1st Purchasing, or otherwise obtaining
custody or control, of a minor.

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.

893.135 1st Attempted capital trafficking offense.

893.135 (1) (a) 3. 1st Trafficking in cannabis, more than
10,000 lbs.

893.135 1st Trafficking in cocaine, more than 400
(1) (b) 1.c. grams, less than 150 kilograms.



661700

435	893.135 (1) (c) 1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
436	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
437	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
438	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, more than 200 grams.
439	893.135 (1) (h) 1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
440	893.135 (1) (j) 1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
441	893.135 (1) (k) 2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
442	896.101 (5) (c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.
	896.104 (4) (a) 3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.



661700

Section 6. Subsection (1) of section 948.062, Florida Statutes, is amended to read:

948.062 Reviewing and reporting serious offenses committed by offenders placed on probation or community control.—

(1) The department shall review the circumstances related to an offender placed on probation or community control who has been arrested while on supervision for the following offenses:

(a) Any murder as provided in s. 782.04;

(b) Any sexual battery as provided in s. 794.011 or s. 794.023;

(c) Any sexual performance by a child as provided in s. 827.071;

(d) Any kidnapping, false imprisonment, or luring of a child as provided in s. 787.01, s. 787.02, or s. 787.025;

(e) Any lewd and lascivious battery or lewd and lascivious molestation as provided in s. 800.04(4) or (5);

(f) Any aggravated child abuse as provided in s. 827.03(2) (a) ~~s. 827.03(2)~~;

(g) Any robbery with a firearm or other deadly weapon, home invasion robbery, or carjacking as provided in s. 812.13(2)(a), s. 812.135, or s. 812.133;

(h) Any aggravated stalking as provided in s. 784.048(3), (4), or (5);

(i) Any forcible felony as provided in s. 776.08, committed by a ~~any~~ person on probation or community control who is designated as a sexual predator; or

(j) Any DUI manslaughter as provided in s. 316.193(3)(c), or vehicular or vessel homicide as provided in s. 782.071 or s.



661700

782.072, committed by a ~~any~~ person who is on probation or community control for an offense involving death or injury resulting from a driving incident.

Section 7. Paragraph (a) of subsection (3) and subsection (14) of section 960.03, Florida Statutes, are amended to read:

960.03 Definitions; ss. 960.01-960.28.—As used in ss. 960.01-960.28, unless the context otherwise requires, the term:

(3) "Crime" means:

(a) A felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death, including a felony or misdemeanor offense committed by either an adult or a juvenile which results in psychiatric or psychological injury to a person younger than 18 years of age who was not physically injured by the criminal act. The term also includes any ~~such~~ criminal act that ~~which~~ is committed within this state but that ~~which~~ falls exclusively within federal jurisdiction.

(14) "Victim" means:

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

(b) A person younger than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured; ~~or~~

(c) A person younger than 18 years of age who was the victim of a felony or misdemeanor offense that resulted in a psychiatric or psychological injury, but who was not physically injured; or

(d) ~~(e)~~ A person against whom a forcible felony was



661700

committed and who suffers a psychiatric or psychological injury
as a direct result of that crime but who does not otherwise
sustain a personal physical injury or death.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to criminal conduct; amending s.
827.03, F.S.; defining the term "mental injury" with
respect to the offenses of abuse, aggravated abuse,
and neglect of a child; requiring that a physician or
psychologist acting as an expert witness in certain
proceedings have certain credentials; amending ss.
775.084, 775.0877, 782.07, 921.0022, and 948.062,
F.S.; conforming cross-references; amending s. 960.03,
F.S.; redefining the term "crime" for purposes of
crime victims compensation to include additional forms
of injury; redefining the term "victim" to conform
with the modified definition of the term "crime";
providing an effective date.

By Senator Detert

23-01300-12

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1 A bill to be entitled
 2 An act relating to criminal conduct; amending s.
 3 827.03, F.S.; defining the term "mental injury" with
 4 respect to the offenses of abuse, aggravated abuse,
 5 and neglect of a child; requiring that a person acting
 6 as an expert witness have certain credentials;
 7 amending ss. 775.084, 775.0877, 782.07, 921.0022, and
 8 948.062, F.S.; conforming cross-references; amending
 9 s. 960.03, F.S.; redefining the term "crime" for
 10 purposes of crime victims compensation to include
 11 additional forms of injury; redefining the term
 12 "victim" to conform with the modified definition of
 13 the term "crime"; providing an effective date.
 14
 15 Be It Enacted by the Legislature of the State of Florida:
 16
 17 Section 1. Section 827.03, Florida Statutes, is amended to
 18 read:
 19 827.03 Abuse, aggravated abuse, and neglect of a child;
 20 penalties.—
 21 (1) DEFINITIONS.—As used in this section, the term:
 22 (a) "Aggravated child abuse" occurs when a person:
 23 1. Commits aggravated battery on a child;
 24 2. Willfully tortures, maliciously punishes, or willfully
 25 and unlawfully cages a child; or
 26 3. Knowingly or willfully abuses a child and in so doing
 27 causes great bodily harm, permanent disability, or permanent
 28 disfigurement to the child.
 29 (b) "Child abuse" means:

Page 1 of 36

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

23-01300-12

20121172__

30 ~~1.(a)~~ Intentional infliction of physical or mental injury
 31 upon a child;
 32 ~~2.(b)~~ An intentional act that could reasonably be expected
 33 to result in physical or mental injury to a child; or
 34 ~~3.(c)~~ Active encouragement of any person to commit an act
 35 that results or could reasonably be expected to result in
 36 physical or mental injury to a child.
 37
 38 ~~A person who knowingly or willfully abuses a child without~~
 39 ~~causing great bodily harm, permanent disability, or permanent~~
 40 ~~disfigurement to the child commits a felony of the third degree,~~
 41 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~
 42 ~~(2) "Aggravated child abuse" occurs when a person:~~
 43 ~~(a) Commits aggravated battery on a child;~~
 44 ~~(b) Willfully tortures, maliciously punishes, or willfully~~
 45 ~~and unlawfully cages a child; or~~
 46 ~~(c) Knowingly or willfully abuses a child and in so doing~~
 47 ~~causes great bodily harm, permanent disability, or permanent~~
 48 ~~disfigurement to the child.~~
 49
 50 ~~A person who commits aggravated child abuse commits a felony of~~
 51 ~~the first degree, punishable as provided in s. 775.082, s.~~
 52 ~~775.083, or s. 775.084.~~
 53 (c) "Maliciously" means wrongfully, intentionally, and
 54 without legal justification or excuse. Maliciousness may be
 55 established by circumstances from which one could conclude that
 56 a reasonable parent would not have engaged in the damaging acts
 57 toward the child for any valid reason and that the primary
 58 purpose of the acts was to cause the victim unjustifiable pain

Page 2 of 36

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23-01300-12

20121172

59 or injury.

60 (d) "Mental injury" means injury to the intellectual or
61 psychological capacity of a child as evidenced by a discernible
62 and substantial impairment in the ability of the child to
63 function within the normal range of performance and behavior as
64 supported by expert testimony. A person may not give expert
65 testimony regarding mental injury unless that person is a
66 physician licensed under chapter 458 or chapter 459, board
67 certified in psychiatry, or a psychologist licensed under
68 chapter 490. The expert testimony requirements apply only to
69 criminal court cases, not to family court or dependency court
70 cases.

71 (e) ~~(3)~~ (a) "Neglect of a child" means:

72 1. A caregiver's failure or omission to provide a child
73 with the care, supervision, and services necessary to maintain
74 the child's physical and mental health, including, but not
75 limited to, food, nutrition, clothing, shelter, supervision,
76 medicine, and medical services that a prudent person would
77 consider essential for the well-being of the child; or

78 2. A caregiver's failure to make a reasonable effort to
79 protect a child from abuse, neglect, or exploitation by another
80 person.

81
82 Except as otherwise provided in this section, neglect of a child
83 may be based on repeated conduct or on a single incident or
84 omission that results in, or could reasonably be expected to
85 result in, serious physical or mental injury, or a substantial
86 risk of death, to a child.

87 (2) OFFENSES.-

23-01300-12

20121172

88 (a) A person who commits aggravated child abuse commits a
89 felony of the first degree, punishable as provided in s.
90 775.082, s. 775.083, or s. 775.084.

91 (b) A person who willfully or by culpable negligence
92 neglects a child and in so doing causes great bodily harm,
93 permanent disability, or permanent disfigurement to the child
94 commits a felony of the second degree, punishable as provided in
95 s. 775.082, s. 775.083, or s. 775.084.

96 (c) A person who knowingly or willfully abuses a child
97 without causing great bodily harm, permanent disability, or
98 permanent disfigurement to the child commits a felony of the
99 third degree, punishable as provided in s. 775.082, s. 775.083,
100 or s. 775.084.

101 (d) ~~(e)~~ A person who willfully or by culpable negligence
102 neglects a child without causing great bodily harm, permanent
103 disability, or permanent disfigurement to the child commits a
104 felony of the third degree, punishable as provided in s.
105 775.082, s. 775.083, or s. 775.084.

106 ~~(4) For purposes of this section, "maliciously" means~~
107 ~~wrongfully, intentionally, and without legal justification or~~
108 ~~excuse. Maliciousness may be established by circumstances from~~
109 ~~which one could conclude that a reasonable parent would not have~~
110 ~~engaged in the damaging acts toward the child for any valid~~
111 ~~reason and that the primary purpose of the acts was to cause the~~
112 ~~victim unjustifiable pain or injury.~~

113 Section 2. Paragraph (d) of subsection (1) of section
114 775.084, Florida Statutes, is amended to read:

115 775.084 Violent career criminals; habitual felony offenders
116 and habitual violent felony offenders; three-time violent felony

23-01300-12 20121172__

117 offenders; definitions; procedure; enhanced penalties or
 118 mandatory minimum prison terms.-

119 (1) As used in this act:

120 (d) "Violent career criminal" means a defendant for whom
 121 the court must impose imprisonment pursuant to paragraph (4) (d),
 122 if it finds that:

123 1. The defendant has previously been convicted as an adult
 124 three or more times for an offense in this state or other
 125 qualified offense that is:

126 a. Any forcible felony, as described in s. 776.08;
 127 b. Aggravated stalking, as described in s. 784.048(3) and
 128 (4);

129 c. Aggravated child abuse, as described in s. 827.03(2) (a);
 130 d. Aggravated abuse of an elderly person or disabled adult,
 131 as described in s. 825.102(2);

132 e. Lewd or lascivious battery, lewd or lascivious
 133 molestation, lewd or lascivious conduct, or lewd or lascivious
 134 exhibition, as described in s. 800.04 or s. 847.0135(5);

135 f. Escape, as described in s. 944.40; or

136 g. A felony violation of chapter 790 involving the use or
 137 possession of a firearm.

138 2. The defendant has been incarcerated in a state prison or
 139 a federal prison.

140 3. The primary felony offense for which the defendant is to
 141 be sentenced is a felony enumerated in subparagraph 1. and was
 142 committed on or after October 1, 1995, and:

143 a. While the defendant was serving a prison sentence or
 144 other sentence, or court-ordered or lawfully imposed supervision
 145 that is imposed as a result of a prior conviction for an

23-01300-12 20121172__

146 enumerated felony; or

147 b. Within 5 years after the conviction of the last prior
 148 enumerated felony, or within 5 years after the defendant's
 149 release from a prison sentence, probation, community control,
 150 control release, conditional release, parole, or court-ordered
 151 or lawfully imposed supervision or other sentence that is
 152 imposed as a result of a prior conviction for an enumerated
 153 felony, whichever is later.

154 4. The defendant has not received a pardon for any felony
 155 or other qualified offense that is necessary for the operation
 156 of this paragraph.

157 5. A conviction of a felony or other qualified offense
 158 necessary to the operation of this paragraph has not been set
 159 aside in any postconviction proceeding.

160 Section 3. Subsection (1) of section 775.0877, Florida
 161 Statutes, is amended to read:

162 775.0877 Criminal transmission of HIV; procedures;
 163 penalties.-

164 (1) In any case in which a person has been convicted of or
 165 has pled nolo contendere or guilty to, regardless of whether
 166 adjudication is withheld, any of the following offenses, or the
 167 attempt thereof, which offense or attempted offense involves the
 168 transmission of body fluids from one person to another:

169 (a) Section 794.011, relating to sexual battery;

170 (b) Section 826.04, relating to incest;

171 (c) Section 800.04, relating to lewd or lascivious offenses
 172 committed upon or in the presence of persons less than 16 years
 173 of age;

174 (d) Sections 784.011, 784.07(2) (a), and 784.08(2) (d),

23-01300-12 20121172__

relating to assault;

(e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault;

(f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery;

(g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a), relating to aggravated battery;

(h) Section 827.03(2)(c)~~(4)~~, relating to child abuse;

(i) Section 827.03(2)(a), relating to aggravated child abuse;

(j) Section 825.102(1), relating to abuse of an elderly person or disabled adult;

(k) Section 825.102(2), relating to aggravated abuse of an elderly person or disabled adult;

(l) Section 827.071, relating to sexual performance by person less than 18 years of age;

(m) Sections 796.03, 796.07, and 796.08, relating to prostitution; or

(n) Section 381.0041(11)(b), relating to donation of blood, plasma, organs, skin, or other human tissue,

the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(3)(h)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(n) for which she or he was convicted or to which

23-01300-12 20121172__

she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

Section 4. Subsection (3) of section 782.07, Florida Statutes, is amended to read:

782.07 Manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.—

(3) A person who causes the death of any person under the age of 18 by culpable negligence under s. 827.03(2)(b)~~(3)~~ commits aggravated manslaughter of a child, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Paragraphs (f), (g), and (i) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051(3)	2nd	Knowing forgery of pedigree papers.

23-01300-12 20121172__

228 499.0051(4) 2nd Knowing purchase or receipt of
prescription drug from unauthorized
person.

229 499.0051(5) 2nd Knowing sale or transfer of prescription
drug to unauthorized person.

230 775.0875(1) 3rd Taking firearm from law enforcement
officer.

231 784.021(1)(a) 3rd Aggravated assault; deadly weapon
without intent to kill.

232 784.021(1)(b) 3rd Aggravated assault; intent to commit
felony.

233 784.041 3rd Felony battery; domestic battery by
strangulation.

234 784.048(3) 3rd Aggravated stalking; credible threat.

235 784.048(5) 3rd Aggravated stalking of person under 16.

236 784.07(2)(c) 2nd Aggravated assault on law enforcement
officer.

237 784.074(1)(b) 2nd Aggravated assault on sexually violent
predators facility staff.

Page 9 of 36

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23-01300-12 20121172__

238 784.08(2)(b) 2nd Aggravated assault on a person 65 years
of age or older.

239 784.081(2) 2nd Aggravated assault on specified official
or employee.

240 784.082(2) 2nd Aggravated assault by detained person on
visitor or other detainee.

241 784.083(2) 2nd Aggravated assault on code inspector.

242 787.02(2) 3rd False imprisonment; restraining with
purpose other than those in s. 787.01.

243 790.115(2)(d) 2nd Discharging firearm or weapon on school
property.

244 790.161(2) 2nd Make, possess, or throw destructive
device with intent to do bodily harm or
damage property.

245 790.164(1) 2nd False report of deadly explosive, weapon
of mass destruction, or act of arson or
violence to state property.

246 790.19 2nd Shooting or throwing deadly missiles
into dwellings, vessels, or vehicles.

247

Page 10 of 36

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23-01300-12 20121172__

794.011(8)(a) 3rd Solicitation of minor to participate in sexual activity by custodial adult.

248 794.05(1) 2nd Unlawful sexual activity with specified minor.

249 800.04(5)(d) 3rd Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.

250 800.04(6)(b) 2nd Lewd or lascivious conduct; offender 18 years of age or older.

251 806.031(2) 2nd Arson resulting in great bodily harm to firefighter or any other person.

252 810.02(3)(c) 2nd Burglary of occupied structure; unarmed; no assault or battery.

253 812.014(2)(b)1. 2nd Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.

254 812.014(6) 2nd Theft; property stolen \$3,000 or more; coordination of others.

255 812.015(9)(a) 2nd Retail theft; property stolen \$300 or more; second or subsequent conviction.

256

23-01300-12 20121172__

812.015(9)(b) 2nd Retail theft; property stolen \$3,000 or more; coordination of others.

257 812.13(2)(c) 2nd Robbery, no firearm or other weapon (strong-arm robbery).

258 817.034(4)(a)1. 1st Communications fraud, value greater than \$50,000.

259 817.4821(5) 2nd Possess cloning paraphernalia with intent to create cloned cellular telephones.

260 825.102(1) 3rd Abuse of an elderly person or disabled adult.

261 825.102(3)(c) 3rd Neglect of an elderly person or disabled adult.

262 825.1025(3) 3rd Lewd or lascivious molestation of an elderly person or disabled adult.

263 825.103(2)(c) 3rd Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.

264 827.03(2)(c) 3rd Abuse of a child.

265 ~~827.03(1)~~

	23-01300-12		20121172__
	<u>827.03(2)(d)</u>	3rd	Neglect of a child.
	827.03(3)(e)		
266			
	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
267			
	836.05	2nd	Threats; extortion.
268			
	836.10	2nd	Written threats to kill or do bodily injury.
269			
	843.12	3rd	Aids or assists person to escape.
270			
	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
271			
	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
272			
	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
273			
	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
274			

	23-01300-12		20121172__
	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
275			
	944.40	2nd	Escapes.
276			
	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
277			
	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
278			
	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
279			
280	(g) LEVEL 7		
281			
	Florida	Felony	
	Statute	Degree	Description
282			
	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
283			
	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
284			
	316.1935(3)(b)	1st	Causing serious bodily injury or death

23-01300-12

20121172__

to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

327.35(3)(c)2.

3rd

Vessel BUI resulting in serious bodily injury.

402.319(2)

2nd

Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfigurement, permanent disability, or death.

409.920
(2)(b)1.a.

3rd

Medicaid provider fraud; \$10,000 or less.

409.920
(2)(b)1.b.

2nd

Medicaid provider fraud; more than \$10,000, but less than \$50,000.

456.065(2)

3rd

Practicing a health care profession without a license.

456.065(2)

2nd

Practicing a health care profession without a license which results in serious bodily injury.

458.327(1)

3rd

Practicing medicine without a license.

Page 15 of 36

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23-01300-12

20121172__

459.013(1) 3rd Practicing osteopathic medicine without a license.

460.411(1)

3rd

Practicing chiropractic medicine without a license.

461.012(1)

3rd

Practicing podiatric medicine without a license.

462.17

3rd

Practicing naturopathy without a license.

463.015(1)

3rd

Practicing optometry without a license.

464.016(1)

3rd

Practicing nursing without a license.

465.015(2)

3rd

Practicing pharmacy without a license.

466.026(1)

3rd

Practicing dentistry or dental hygiene without a license.

467.201

3rd

Practicing midwifery without a license.

468.366

3rd

Delivering respiratory care services without a license.

483.828(1)

3rd

Practicing as clinical laboratory personnel without a license.

Page 16 of 36

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23-01300-12 20121172__

303 483.901(9) 3rd Practicing medical physics without a
license.

304 484.013(1)(c) 3rd Preparing or dispensing optical devices
without a prescription.

305 484.053 3rd Dispensing hearing aids without a
license.

306 494.0018(2) 1st Conviction of any violation of ss.
494.001-494.0077 in which the total
money and property unlawfully obtained
exceeded \$50,000 and there were five or
more victims.

307 560.123(8)(b)1. 3rd Failure to report currency or payment
instruments exceeding \$300 but less
than \$20,000 by a money services
business.

308 560.125(5)(a) 3rd Money services business by unauthorized
person, currency or payment instruments
exceeding \$300 but less than \$20,000.

309 655.50(10)(b)1. 3rd Failure to report financial
transactions exceeding \$300 but less
than \$20,000 by financial institution.

310

23-01300-12 20121172__

775.21(10)(a) 3rd Sexual predator; failure to register;
failure to renew driver's license or
identification card; other registration
violations.

311 775.21(10)(b) 3rd Sexual predator working where children
regularly congregate.

312 775.21(10)(g) 3rd Failure to report or providing false
information about a sexual predator;
harbor or conceal a sexual predator.

313 782.051(3) 2nd Attempted felony murder of a person by
a person other than the perpetrator or
the perpetrator of an attempted felony.

314 782.07(1) 2nd Killing of a human being by the act,
procurement, or culpable negligence of
another (manslaughter).

315 782.071 2nd Killing of a human being or viable
fetus by the operation of a motor
vehicle in a reckless manner (vehicular
homicide).

316 782.072 2nd Killing of a human being by the
operation of a vessel in a reckless
manner (vessel homicide).

317

23-01300-12 20121172__

318 784.045 (1) (a) 1. 2nd Aggravated battery; intentionally
causing great bodily harm or
disfigurement.

319 784.045 (1) (a) 2. 2nd Aggravated battery; using deadly
weapon.

320 784.045 (1) (b) 2nd Aggravated battery; perpetrator aware
victim pregnant.

321 784.048 (4) 3rd Aggravated stalking; violation of
injunction or court order.

322 784.048 (7) 3rd Aggravated stalking; violation of court
order.

323 784.07 (2) (d) 1st Aggravated battery on law enforcement
officer.

324 784.074 (1) (a) 1st Aggravated battery on sexually violent
predators facility staff.

325 784.08 (2) (a) 1st Aggravated battery on a person 65 years
of age or older.

326 784.081 (1) 1st Aggravated battery on specified
official or employee.

784.082 (1) 1st Aggravated battery by detained person

Page 19 of 36

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23-01300-12 20121172__

327 on visitor or other detainee.

328 784.083 (1) 1st Aggravated battery on code inspector.

790.07 (4) 1st Specified weapons violation subsequent
to previous conviction of s. 790.07 (1)
or (2).

329 790.16 (1) 1st Discharge of a machine gun under
specified circumstances.

330 790.165 (2) 2nd Manufacture, sell, possess, or deliver
hoax bomb.

331 790.165 (3) 2nd Possessing, displaying, or threatening
to use any hoax bomb while committing
or attempting to commit a felony.

332 790.166 (3) 2nd Possessing, selling, using, or
attempting to use a hoax weapon of mass
destruction.

333 790.166 (4) 2nd Possessing, displaying, or threatening
to use a hoax weapon of mass
destruction while committing or
attempting to commit a felony.

334 790.23 1st, PBL Possession of a firearm by a person who
qualifies for the penalty enhancements

Page 20 of 36

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23-01300-12 20121172__

provided for in s. 874.04.

335 794.08(4) 3rd Female genital mutilation; consent by a
parent, guardian, or a person in
custodial authority to a victim younger
than 18 years of age.

336 796.03 2nd Procuring any person under 16 years for
prostitution.

337 800.04(5)(c)1. 2nd Lewd or lascivious molestation; victim
less than 12 years of age; offender
less than 18 years.

338 800.04(5)(c)2. 2nd Lewd or lascivious molestation; victim
12 years of age or older but less than
16 years; offender 18 years or older.

339 806.01(2) 2nd Maliciously damage structure by fire or
explosive.

340 810.02(3)(a) 2nd Burglary of occupied dwelling; unarmed;
no assault or battery.

341 810.02(3)(b) 2nd Burglary of unoccupied dwelling;
unarmed; no assault or battery.

342 810.02(3)(d) 2nd Burglary of occupied conveyance;
unarmed; no assault or battery.

23-01300-12 20121172__

343 810.02(3)(e) 2nd Burglary of authorized emergency
vehicle.

344 812.014(2)(a)1. 1st Property stolen, valued at \$100,000 or
more or a semitrailer deployed by a law
enforcement officer; property stolen
while causing other property damage;
1st degree grand theft.

345 812.014(2)(b)2. 2nd Property stolen, cargo valued at less
than \$50,000, grand theft in 2nd
degree.

346 812.014(2)(b)3. 2nd Property stolen, emergency medical
equipment; 2nd degree grand theft.

347 812.014(2)(b)4. 2nd Property stolen, law enforcement
equipment from authorized emergency
vehicle.

348 812.0145(2)(a) 1st Theft from person 65 years of age or
older; \$50,000 or more.

349 812.019(2) 1st Stolen property; initiates, organizes,
plans, etc., the theft of property and
traffics in stolen property.

350 812.131(2)(a) 2nd Robbery by sudden snatching.

23-01300-12 20121172__

351 812.133(2)(b) 1st Carjacking; no firearm, deadly weapon,
or other weapon.

352 817.234(8)(a) 2nd Solicitation of motor vehicle accident
victims with intent to defraud.

353 817.234(9) 2nd Organizing, planning, or participating
in an intentional motor vehicle
collision.

354 817.234(11)(c) 1st Insurance fraud; property value
\$100,000 or more.

355 817.2341 1st Making false entries of material fact
(2)(b) & or false statements regarding property
(3)(b) values relating to the solvency of an
insuring entity which are a significant
cause of the insolvency of that entity.

356 825.102(3)(b) 2nd Neglecting an elderly person or
disabled adult causing great bodily
harm, disability, or disfigurement.

357 825.103(2)(b) 2nd Exploiting an elderly person or
disabled adult and property is valued
at \$20,000 or more, but less than
\$100,000.

358

23-01300-12 20121172__

359 827.03(2) 2nd Neglect of a child causing great bodily
~~827.03(3)(b)~~ harm, disability, or disfigurement.

827.04(3) 3rd Impregnation of a child under 16 years
of age by person 21 years of age or
older.

360 837.05(2) 3rd Giving false information about alleged
capital felony to a law enforcement
officer.

361 838.015 2nd Bribery.

362 838.016 2nd Unlawful compensation or reward for
official behavior.

363 838.021(3)(a) 2nd Unlawful harm to a public servant.

364 838.22 2nd Bid tampering.

365 847.0135(3) 3rd Solicitation of a child, via a computer
service, to commit an unlawful sex act.

366 847.0135(4) 2nd Traveling to meet a minor to commit an
unlawful sex act.

367 872.06 2nd Abuse of a dead human body.

368 874.10 1st,PBL Knowingly initiates, organizes, plans,

23-01300-12

20121172__

finances, directs, manages, or
supervises criminal gang-related
activity.

893.13(1)(c)1. 1st Sell, manufacture, or deliver cocaine
(or other drug prohibited under s.
893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4.) within 1,000 feet
of a child care facility, school, or
state, county, or municipal park or
publicly owned recreational facility or
community center.

893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine
or other drug prohibited under s.
893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4., within 1,000 feet
of property used for religious services
or a specified business site.

893.13(4)(a) 1st Deliver to minor cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4. drugs).

893.135(1)(a)1. 1st Trafficking in cannabis, more than 25
lbs., less than 2,000 lbs.

893.135 1st Trafficking in cocaine, more than 28
(1)(b)1.a. grams, less than 200 grams.

Page 25 of 36

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23-01300-12

20121172__

893.135 1st Trafficking in illegal drugs, more than
(1)(c)1.a. 4 grams, less than 14 grams.

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

893.135(1)(e)1. 1st Trafficking in methaqualone, more than
200 grams, less than 5 kilograms.

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

893.135 1st Trafficking in flunitrazepam, 4 grams
(1)(g)1.a. or more, less than 14 grams.

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

893.135 1st Trafficking in 1,4-Butanediol, 1
(1)(j)1.a. kilogram or more, less than 5
kilograms.

893.135 1st Trafficking in Phenethylamines, 10
(1)(k)2.a. grams or more, less than 200 grams.

893.1351(2) 2nd Possession of place for trafficking in
or manufacturing of controlled

Page 26 of 36

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23-01300-12 20121172__

substance.

896.101(5)(a) 3rd Money laundering, financial transactions exceeding \$300 but less than \$20,000.

896.104(4)(a)1. 3rd Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.

943.0435(4)(c) 2nd Sexual offender vacating permanent residence; failure to comply with reporting requirements.

943.0435(8) 2nd Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

943.0435(9)(a) 3rd Sexual offender; failure to comply with reporting requirements.

943.0435(13) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

943.0435(14) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification.

Page 27 of 36

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23-01300-12 20121172__

944.607(9) 3rd Sexual offender; failure to comply with reporting requirements.

944.607(10)(a) 3rd Sexual offender; failure to submit to the taking of a digitized photograph.

944.607(12) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

944.607(13) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification.

985.4815(10) 3rd Sexual offender; failure to submit to the taking of a digitized photograph.

985.4815(12) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

985.4815(13) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification.

(i) LEVEL 9

Page 28 of 36

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	23-01300-12		20121172	
	Florida	Felony		
	Statute	Degree	Description	
400	316.193	1st	DUI manslaughter; failing to render aid or give information.	
	(3) (c) 3.b.			
401	327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.	
402	409.920	1st	Medicaid provider fraud; \$50,000 or more.	
	(2) (b) 1.c.			
403	499.0051 (9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.	
404	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.	
405	560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.	
406	655.50 (10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.	
407				

	23-01300-12		20121172	
	775.0844	1st	Aggravated white collar crime.	
408	782.04 (1)	1st	Attempt, conspire, or solicit to commit premeditated murder.	
409	782.04 (3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.	
410	782.051 (1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04 (3).	
411	782.07 (2)	1st	Aggravated manslaughter of an elderly person or disabled adult.	
412	787.01 (1) (a) 1.	1st, PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.	
413	787.01 (1) (a) 2.	1st, PBL	Kidnapping with intent to commit or facilitate commission of any felony.	
414	787.01 (1) (a) 4.	1st, PBL	Kidnapping with intent to interfere with performance of any governmental or political function.	
415	787.02 (3) (a)	1st	False imprisonment; child under age	

23-01300-12

20121172__

13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.

790.161 1st Attempted capital destructive device offense.

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

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

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

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

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

794.08(2) 1st Female genital mutilation; victim

Page 31 of 36

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

23-01300-12

20121172__

younger than 18 years of age.

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

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

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

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

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

827.03(2)(a) 1st Aggravated child abuse.

~~827.03(2)~~

847.0145(1) 1st Selling, or otherwise transferring custody or control, of a minor.

847.0145(2) 1st Purchasing, or otherwise obtaining custody or control, of a minor.

Page 32 of 36

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

23-01300-12 20121172__

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.

893.135 1st Attempted capital trafficking offense.

893.135(1)(a)3. 1st Trafficking in cannabis, more than
10,000 lbs.

893.135 1st Trafficking in cocaine, more than 400
(1)(b)1.c. grams, less than 150 kilograms.

893.135 1st Trafficking in illegal drugs, more
(1)(c)1.c. than 28 grams, less than 30 kilograms.

893.135 1st Trafficking in phencyclidine, more
(1)(d)1.c. than 400 grams.

893.135 1st Trafficking in methaqualone, more than
(1)(e)1.c. 25 kilograms.

893.135 1st Trafficking in amphetamine, more than
(1)(f)1.c. 200 grams.

893.135 1st Trafficking in gamma-hydroxybutyric
(1)(h)1.c. acid (GHB), 10 kilograms or more.

23-01300-12 20121172__

893.135 1st Trafficking in 1,4-Butanediol, 10
(1)(j)1.c. kilograms or more.

893.135 1st Trafficking in Phenethylamines, 400
(1)(k)2.c. grams or more.

896.101(5)(c) 1st Money laundering, financial
instruments totaling or exceeding
\$100,000.

896.104(4)(a)3. 1st Structuring transactions to evade
reporting or registration
requirements, financial transactions
totaling or exceeding \$100,000.

Section 6. Subsection (1) of section 948.062, Florida
Statutes, is amended to read:

948.062 Reviewing and reporting serious offenses committed
by offenders placed on probation or community control.—

(1) The department shall review the circumstances related
to an offender placed on probation or community control who has
been arrested while on supervision for the following offenses:

(a) Any murder as provided in s. 782.04;

(b) Any sexual battery as provided in s. 794.011 or s.
794.023;

(c) Any sexual performance by a child as provided in s.
827.071;

(d) Any kidnapping, false imprisonment, or luring of a
child as provided in s. 787.01, s. 787.02, or s. 787.025;

23-01300-12

20121172

459 (e) Any lewd and lascivious battery or lewd and lascivious
 460 molestation as provided in s. 800.04(4) or (5);
 461 (f) Any aggravated child abuse as provided in s.
 462 827.03(2)(a) s. 827.03(2);
 463 (g) Any robbery with a firearm or other deadly weapon, home
 464 invasion robbery, or carjacking as provided in s. 812.13(2)(a),
 465 s. 812.135, or s. 812.133;
 466 (h) Any aggravated stalking as provided in s. 784.048(3),
 467 (4), or (5);
 468 (i) Any forcible felony as provided in s. 776.08, committed
 469 by a ~~any~~ person on probation or community control who is
 470 designated as a sexual predator; or
 471 (j) Any DUI manslaughter as provided in s. 316.193(3)(c),
 472 or vehicular or vessel homicide as provided in s. 782.071 or s.
 473 782.072, committed by a ~~any~~ person who is on probation or
 474 community control for an offense involving death or injury
 475 resulting from a driving incident.
 476 Section 7. Paragraph (a) of subsection (3) and subsection
 477 (14) of section 960.03, Florida Statutes, are amended to read:
 478 960.03 Definitions; ss. 960.01-960.28.—As used in ss.
 479 960.01-960.28, unless the context otherwise requires, the term:
 480 (3) "Crime" means:
 481 (a) A felony or misdemeanor offense committed by either an
 482 adult or a juvenile which results in physical injury or death,
 483 including a felony or misdemeanor offense committed by either an
 484 adult or a juvenile which results in psychiatric or
 485 psychological injury to a person younger than 18 years of age
 486 who was not physically injured by the criminal act. The term
 487 also includes any ~~such~~ criminal act ~~that which~~ is committed

Page 35 of 36

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

23-01300-12

20121172

488 within this state but ~~that which~~ falls exclusively within
 489 federal jurisdiction.
 490 (14) "Victim" means:
 491 (a) A person who suffers personal physical injury or death
 492 as a direct result of a crime;
 493 (b) A person younger than 18 years of age who was present
 494 at the scene of a crime, saw or heard the crime, and suffered a
 495 psychiatric or psychological injury because of the crime, but
 496 who was not physically injured; ~~or~~
 497 (c) A person younger than 18 years of age who was the
 498 victim of a felony or misdemeanor offense that resulted in a
 499 psychiatric or psychological injury, but who was not physically
 500 injured; or
 501 (d) ~~e~~ A person against whom a forcible felony was
 502 committed and who suffers a psychiatric or psychological injury
 503 as a direct result of that crime but who does not otherwise
 504 sustain a personal physical injury or death.
 505 Section 8. This act shall take effect October 1, 2012.

Page 36 of 36

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



The Florida Senate
Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 12, 2012

I respectfully request that **Senate Bill #1172**, relating to Criminal Conduct, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy Detert".

Senator Nancy C. Detert
Florida Senate, District 23

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12
Meeting Date

Topic _____

Bill Number SB 1172
(if applicable)

Name SAM BELL

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1298 MILLSTREAM
Street
TRAIL FL 32312
City State Zip

Phone 222-3533

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA PEDIATRIC SOCIETY

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)

2-9-12
~~1172~~

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Topic Out of State Medical Witnesses

Bill Number 1172
(if applicable)

Name Randell Alexander MD

Amendment Barcode _____
(if applicable)

Job Title Professor of Pediatrics

Address 2358 Riverside Ave #406
Street

Phone _____

Jacksonville _____
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 1272

INTRODUCER: Criminal Justice Committee and Senator Latvala

SUBJECT: Possession of a Firearm or Destructive Device During the Commission of an Offense

DATE: February 9, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" 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 provides that an offender who is before the court for sentencing on a conviction of possession of a firearm by a convicted felon *and* who has a *prior conviction* for committing or attempting to commit certain felony offenses, *during which time* he or she possessed a firearm or destructive device, is subject to a 10 year mandatory sentence under the “10-20-Life” law.

This bill substantially amends section 775.087 of the Florida Statutes.

II. Present Situation:

Section 775.087(2), F.S., is commonly referred to as the “10-20-Life” sentencing law. It requires a minimum term of imprisonment if the offender is convicted of committing or attempting to commit one of the enumerated felony offenses, regardless of whether the use of a weapon is an element of that felony offense, when during the commission of the felony offense the offender possesses, discharges, or causes death or great bodily harm with a firearm or destructive device.¹

¹ s. 775.087(2) (a) 1.-3., F.S.

Firearm is defined in s. 790.001(6), F.S., as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. It does not include an antique firearm unless the antique firearm is used in the commission of a crime. Destructive device is defined in s. 790.001(4), F.S., as follows:

(4) "Destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. "Destructive device" does not include:

- (a) A device which is not designed, redesigned, used, or intended for use as a weapon;
- (b) Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device;
- (c) Any shotgun other than a short-barreled shotgun; or
- (d) Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

The offenses to which the minimum mandatory sentences apply are set forth in s. 775.087(2)(a)1., F.S. as follows:

- a. Murder;
- b. Sexual battery;
- c. Robbery;
- d. Burglary;
- e. Arson;
- f. Aggravated assault;
- g. Aggravated battery;
- h. Kidnapping;
- i. Escape;
- j. Aircraft piracy;
- k. Aggravated child abuse;
- l. Aggravated abuse of an elderly person or disabled adult;
- m. Unlawful throwing, placing, or discharging of a destructive device or bomb;

- n. Carjacking;
- o. Home-invasion robbery;
- p. Aggravated stalking;
- q. Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1); or
- r. Possession of a firearm by a felon.

A person who possesses a firearm or destructive device during the commission of the offenses listed above *except for* aggravated assault, possession of a firearm by a convicted felon, or burglary of a conveyance, shall be sentenced to a minimum of 10 years imprisonment.² If the conviction is for aggravated assault, possession of a firearm by a convicted felon or burglary of a conveyance, the minimum sentence is 3 years imprisonment.³

The mandatory minimum sentence provided for in s. 775.087(2), F.S., increases to 20 years if the firearm or destructive device is discharged during the commission of or attempt to commit the offenses enumerated in s. 775.087(2)(a)1. a.-q., F.S., as set forth above.⁴ The offense of possession of a firearm by a convicted felon is specifically *excluded* from the application of the mandatory 20 years.

The mandatory minimum sentence provided for in s. 775.087(2), F.S., increases to 25 years to life if the firearm or destructive device is discharged and someone is killed or suffers great bodily harm by the discharge during the commission of or attempt to commit the offenses enumerated in s. 775.087(2)(a)1. a.-q., F.S., as set forth above.⁵ The offense of possession of a firearm by a convicted felon is likewise *excluded* from the application of the mandatory 25 years to life sentence.

III. Effect of Proposed Changes:

The bill provides that an offender who is before the court for sentencing on a conviction of possession of a firearm by a convicted felon *and* who has a *prior conviction* for committing or attempting to commit the following listed offenses, *during which time* he or she possessed a firearm or destructive device, is subject to the 10 year mandatory sentence under s. 775.087(2)(a)1., F.S.⁶

² s. 775.087(2)(a)1., F.S.

³ *Id.*

⁴ s. 775.087(2)(a)2., F.S.

⁵ s. 775.087(2)(a)3., F.S.

⁶ This interpretation of the effect of the bill is partly based upon a review of the bill's title as the statutory amendment itself is somewhat unclear (please see the Technical Deficiencies section of the Bill Analysis). It should be noted that the House companion bill (HB 947) was amended on January 31, 2012, in an attempt to clarify the bill language.

The felony offenses that comprise the *listed prior conviction offenses* referred to above are:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; or
- Aggravated stalking.⁷

The bill has a July 1, 2012 effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁷ This list of offenses is found in s. 775.084(1)(b)1., F.S., the “habitual violent felony offender” statute.

C. Government Sector Impact:

On January 30, 2012, the Criminal Justice Impact Conference determined that the bill's effect on the Department of Corrections inmate population should be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on February 9, 2012:

The Committee Substitute inserted language that clarifies the application of the sentencing provision as was intended.

B. Amendments:

None.



676490

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2012	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 56 - 61
and insert:

"destructive device" during the commission of the offense.
However, if an offender who is convicted of the offense of
possession of a firearm by a felon has a previous conviction of
committing or attempting to commit a felony listed in s.
775.084(1)(b)1. and actually possessed a firearm or destructive
device during the commission of the prior felony, the offender
shall be sentenced to a minimum term of imprisonment of 10



676490

13 | years.

By Senator Latvala

16-01026-12

20121272__

1 A bill to be entitled
 2 An act relating to possession of a firearm or
 3 destructive device during the commission of an
 4 offense; amending s. 775.087, F.S.; providing that an
 5 exception to the 10-year minimum term for persons
 6 convicted of certain offenses during which the person
 7 actually possessed a firearm or destructive device
 8 does not to apply to offenders convicted for
 9 possession of a firearm by a felon who have certain
 10 prior convictions; providing an effective date.
 11
 12 Be It Enacted by the Legislature of the State of Florida:
 13
 14 Section 1. Paragraph (a) of subsection (2) of section
 15 775.087, Florida Statutes, is amended to read:
 16 775.087 Possession or use of weapon; aggravated battery;
 17 felony reclassification; minimum sentence.—
 18 (2)(a)1. Any person who is convicted of a felony or an
 19 attempt to commit a felony, regardless of whether the use of a
 20 weapon is an element of the felony, and the conviction was for:
 21 a. Murder;
 22 b. Sexual battery;
 23 c. Robbery;
 24 d. Burglary;
 25 e. Arson;
 26 f. Aggravated assault;
 27 g. Aggravated battery;
 28 h. Kidnapping;
 29 i. Escape;

Page 1 of 3

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16-01026-12

20121272__

30 j. Aircraft piracy;
 31 k. Aggravated child abuse;
 32 l. Aggravated abuse of an elderly person or disabled adult;
 33 m. Unlawful throwing, placing, or discharging of a
 34 destructive device or bomb;
 35 n. Carjacking;
 36 o. Home-invasion robbery;
 37 p. Aggravated stalking;
 38 q. Trafficking in cannabis, trafficking in cocaine, capital
 39 importation of cocaine, trafficking in illegal drugs, capital
 40 importation of illegal drugs, trafficking in phencyclidine,
 41 capital importation of phencyclidine, trafficking in
 42 methaqualone, capital importation of methaqualone, trafficking
 43 in amphetamine, capital importation of amphetamine, trafficking
 44 in flunitrazepam, trafficking in gamma-hydroxybutyric acid
 45 (GHB), trafficking in 1,4-Butanediol, trafficking in
 46 Phenethylamines, or other violation of s. 893.135(1); or
 47 r. Possession of a firearm by a felon
 48
 49 and during the commission of the offense, such person actually
 50 possessed a "firearm" or "destructive device" as those terms are
 51 defined in s. 790.001, shall be sentenced to a minimum term of
 52 imprisonment of 10 years, except that a person who is convicted
 53 for aggravated assault, possession of a firearm by a felon, or
 54 burglary of a conveyance shall be sentenced to a minimum term of
 55 imprisonment of 3 years if such person possessed a "firearm" or
 56 "destructive device" during the commission of the offense unless
 57 such a person convicted for possession of a firearm by a felon
 58 has a previous conviction of a felony or an attempt to commit a

Page 2 of 3

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16-01026-12

20121272

59 felony listed in s. 775.084(1)(b)1. and actually possessed a
60 "firearm" or "destructive device" during the commission of that
61 offense.

62 2. Any person who is convicted of a felony or an attempt to
63 commit a felony listed in sub-subparagraphs (a)1.a.-q.,
64 regardless of whether the use of a weapon is an element of the
65 felony, and during the course of the commission of the felony
66 such person discharged a "firearm" or "destructive device" as
67 defined in s. 790.001 shall be sentenced to a minimum term of
68 imprisonment of 20 years.

69 3. Any person who is convicted of a felony or an attempt to
70 commit a felony listed in sub-subparagraphs (a)1.a.-q.,
71 regardless of whether the use of a weapon is an element of the
72 felony, and during the course of the commission of the felony
73 such person discharged a "firearm" or "destructive device" as
74 defined in s. 790.001 and, as the result of the discharge, death
75 or great bodily harm was inflicted upon any person, the
76 convicted person shall be sentenced to a minimum term of
77 imprisonment of not less than 25 years and not more than a term
78 of imprisonment of life in prison.

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



SENATOR JACK LATVALA
16th District

Tallahassee, Florida 32399-1100

COMMITTEES:

Transportation, *Chair*
Budget - Subcommittee on General Government
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Children, Families, and Elder Affairs
Environmental Preservation and Conservation
Governmental Oversight and Accountability
Reapportionment

January 12, 2011

The Honorable Senator Greg Evers, Chair
Senate Committee on Criminal Justice
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

A large handwritten checkmark is drawn in the right margin of the letter.

Dear Chairman Evers:

I respectfully request consideration of Senate Bill 1272 regarding Possession of a Firearm at your earliest convenience.

This bill amends Florida's 10-20-Life Act so that all criminals who violate this Act and who have previously been convicted of violent or more serious offenses are required to serve the 10-year mandatory minimum sentence and can no longer be exempted from this requirement as allowed for under the current law. I would greatly appreciate the opportunity to present this legislation to the Committee on Criminal Justice as soon as possible.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack", is written over the typed name.

Jack Latvala
State Senator
District 16

JL: JW

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

REPLY TO:

- ☐ 12425 28th Street North, Suite 102, St. Petersburg, Florida 33716 (727) 558-6500
- ☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5075

Senate's Website: www.flsenate.gov

MIKE HARINOPOLIS

MICHAEL S. "MIKE" BENNETT

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12

Meeting Date

Topic Possession of Firearm or Destructive Device Bill Number SB-1272
(if applicable)

Name Jim GABARD Amendment Barcode _____
(if applicable)

Job Title _____

Address 924 N. GARDEN ST. Phone 850-219-3631
Street
TALLAHASSEE FL 32317
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing The Florida Police Chiefs Assn.

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)

2-9-12

Meeting Date

Topic POSSESSION of FIREARM

Bill Number SB 1272
(if applicable)

Name MIKE Fearless

Amendment Barcode _____
(if applicable)

Job Title CAPTAIN

Address 2400 W COLONIAL DR

Phone _____

Street

ORANGE

FL

3284

City

State

Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing ORANGE COUNTY SHERIFF'S OFFICE

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)

02/09/12

Meeting Date

Topic POSSESSION OF FIREARMS BY FELONS Bill Number SB 1272
(if applicable)

Name BRYAN BARNARD Amendment Barcode _____
(if applicable)

Job Title LIEUTENANT VOLUSIA COUNTY S.O.

Address 123 W. INDIANA AVE Phone 386-736-5999
Street

DELAND FL 32721 E-mail —
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing VOLUSIA COUNTY SHERIFF'S OFFICE

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)

02/09/12
Meeting Date

Topic Possession of Firearms - Petaluma Bill Number SB 1272
(if applicable)

Name John BANNERMAN Amendment Barcode
(if applicable)

Job Title Captain / Deputy Sheriff

Address PO Box 569 Phone 386 736 5964
Street

City Deltona State FL Zip 32926
E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Sheriffs Association

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

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

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

2/9/12

Meeting Date

Topic Poss. of a Firearm

Bill Number SB 1272
(if applicable)

Name JIM LIVINGSTON

Amendment Barcode _____
(if applicable)

Job Title MAJOR

Address HCSO
Street

Phone _____

Tampa, FL
City State Zip

E-mail jlivings@hcsotampa.fl.us

Speaking: ☒ For ☐ Against ☐ Information

Representing Hillsborough Co. Sheriff's Office

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)

2-9-12

Meeting Date

Topic Firearms by Felons

Bill Number 1272
(if applicable)

Name Frank Niversmith

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2901 Sh Bradford
Street

Phone 576-5858

Tall FL
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Sheriffs Assoc.

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)

2-9-12

Meeting Date

Topic _____

Bill Number SB 1272
(if applicable)

Name Bruce Colton

Amendment Barcode _____
(if applicable)

Job Title State Attorney 19th Circuit

Address 411 S-2nd St.

Phone 772-462-1300

FT. Pierce FL 34950
City State Zip

E-mail BColton@SFO19.org

Speaking: ☒ For ☐ Against ☐ Information

Representing FRAA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 1290

INTRODUCER: Senator Negron

SUBJECT: Criminal Penalties for Violating Securities Laws

DATE: January 24, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.			BI	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill amends the Criminal Punishment Code Offense Severity Ranking Chart, which sets forth the sentencing points that are scored for the listed felony offenses, as it relates to violations of the Florida Securities and Investor Protection Act. It increases the lowest permissible sentences for failure to register with the Office of Financial Regulation as a dealer, associated person, or issuer. It also increases the lowest permissible sentence for selling or offering to sell an unregistered security.

This bill substantially amends section 921.0022 of the Florida Statutes.

II. Present Situation:

Florida Securities and Investor Protection Act

Chapter 517, F.S., is entitled the “Florida Securities and Investor Protection Act” (FSIPA).¹ The purpose of FSIPA is to protect the public from fraudulent and deceptive practices in the sale and marketing of securities.^{2 3} This purpose is achieved principally by requiring the registration of

¹ Section 517.011, F.S.

² Section 517.021, F.S., defines the term “security” to include any of the following: notes, stocks, treasury stocks, bond, a debenture, an evidence of indebtedness, certificates of deposit, certificates of deposit for a security, certificates of interest or participation, whiskey warehouse receipts or other commodity warehouse receipts, certificates of interest in a profit-sharing agreement or the right to participate therein, certificates of interest in an oil, gas, petroleum, mineral, or mining title or lease or the right to participate therein, collateral trust certificates, reorganization certificates, preorganization subscriptions, transferable shares, investment contracts, a beneficial interest in title to property, profits, or earnings, an interest in or under a profit-sharing or participation agreement or scheme, any option contract which entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time, other instruments commonly known as a

securities and securities dealers, which provides potential investors with sufficient information to enable them to protect themselves.⁴

The Office of Financial Regulation (OFR)⁵ is the entity responsible for registering securities and securities dealers.⁶ The processes for registering are outlined in ss. 517.081, 517.082, 517.12, and 517.1201, F.S., which include requirements that OFR be provided an application, certain financial statements, and other specified information.

Section 517.07(1), F.S., makes it unlawful for any person to sell or offer to sell specified securities unless they are registered. In addition to being registered, s. 517.07(2), F.S., requires that a securities purchaser be furnished with a prospectus meeting the requirements of rules adopted by the Financial Services Commission. Violations of s. 517.07(1) and (2), F.S., are currently 3rd degree felonies, ranked in Level 2 of the Offense Severity Ranking Chart.⁷ A Level 2 offense equates to 10 sentencing points.

Section 517.12(1), F.S., specifies that no dealer, associated person, or issuer⁸ of securities shall sell or offer for sale any securities in or from offices in Florida, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with OFR.

In addition, OFR is prohibited from registering any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to chapter 517, F.S.⁹ A violation of s. 517.12(1), F.S., is a 3rd degree felony ranked in Level 1 of the Offense Severity Ranking Chart.¹⁰ A Level 1 offense equates to 4 sentencing points.

The Criminal Punishment Code - Offense Severity Ranking Chart

The Criminal Punishment Code applies to sentencing for felony offenses (except capital felonies) committed on or after October 1, 1998.¹¹ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the Legislature.¹² As the offense level

security, including an interim or temporary bond, debenture, note, or certificate, receipts for a security, or for subscription to a security, or any right to subscribe to or purchase any security, and viatical settlement investments.

³ *Rushing v. Wells Fargo Bank, N.A.*, 752 F. Supp. 2d 1254 (M.D. Fla. 2010); *Arthur Young & Co. v. Mariner Corp.*, 630 So.2d 1199, 1203 (Fla. 4th DCA 1994).

⁴ 32 Fla. Jur 2d Investment Securities s. 122

⁵ The Office of Financial Regulation regulates the banking, finance, and securities industries in Florida and is administratively housed within the Department of Financial Services. OFR is headed by a commissioner appointed by the Financial Services Commission, which consists of the Governor and Cabinet.

(<http://www.flofr.com/Office/Aboutofr.aspx>)(last visited on January 5, 2012).

⁶ Sections 517.081 and 517.12, F.S.

⁷ See ss. 517.302 and 921.0022(3)(b), F.S.

⁸ Section 517.021, F.S., defines the terms “dealer,” “associated person,” and “issuer.”

⁹ Section 517.12(1), F.S.

¹⁰ See ss. 517.302 and 921.0022(3)(a), F.S.

¹¹ Section 921.002, F.S.

¹² Section 921.0022, F.S.

increases, the number of points rises. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.¹³

A defendant's sentence is calculated based on points, which are assigned for factors including: the offense for which the defendant is being sentenced; victim injury; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors.¹⁴ The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction (i.e., jail). If the total sentence points exceed 44 points, a prison sentence is the lowest permissible sentence. In each instance, the sentencing range is the lowest permissible sentence up to the maximum penalty provided in s. 775.082, F.S., which is based on the degree of the felony.¹⁵

III. Effect of Proposed Changes:

The bill increases the ranking of securities-related offenses in the Offense Severity Ranking Chart as follows:

- A violation of s. 517.07(1), F.S. (requiring certain securities to be registered prior to sale), increases from a Level 2 offense (equating to 10 sentencing points) to a Level 4 offense (equating to 22 sentencing points).
- A violation of s. 517.12(1), F.S. (requiring securities dealers, associated persons or issuers of securities to be registered), increases from a Level 1 offense (equating to 4 sentencing points) to a Level 4 offense (equating to 22 sentencing points).

As a result, the lowest permissible sentence for violations of ss. 517.07(1) and 517.12(1), F.S., will be increased.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ Section 921.0023, F.S.

¹⁴ Section 921.0024, F.S.

¹⁵ The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony it is fifteen years and for a third degree felony the statutory maximum is five years. Section 775.082, F.S.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met January 17, 2012, and determined this bill will have an insignificant impact on the state prison beds because of the low volume of individuals reported with this offense.

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.

By Senator Negrón

28-01087-12

20121290__

1 A bill to be entitled
 2 An act relating to criminal penalties for violations
 3 of securities laws; amending s. 921.0022, F.S.;
 4 increasing the offense severity ranking for failing to
 5 register securities with the Office of Financial
 6 Regulation; specifying the offense severity ranking
 7 for the failure of a dealer, associated person, or
 8 issuer of securities to register with the Office of
 9 Financial Regulation; providing an effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Paragraphs (b) and (d) of subsection (3) of
 14 section 921.0022, Florida Statutes, are amended to read:
 15 921.0022 Criminal Punishment Code; offense severity ranking
 16 chart.—
 17 (3) OFFENSE SEVERITY RANKING CHART
 18 (b) LEVEL 2
 19 Florida Felony
 Statute Degree Description
 20 379.2431 3rd Possession of 11 or fewer marine turtle
 (1) (e) 3. eggs in violation of the Marine Turtle
 Protection Act.
 21 379.2431 3rd Possession of more than 11 marine turtle
 (1) (e) 4. eggs in violation of the Marine Turtle
 Protection Act.

Page 1 of 10

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

28-01087-12

20121290__

403.413(5) (c) 3rd Dumps waste litter exceeding 500 lbs. in
 weight or 100 cubic feet in volume or
 any quantity for commercial purposes, or
 hazardous waste.
 22 517.07(2) 3rd Failure to furnish a prospectus meeting
~~517.07~~ requirements. Registration of securities
~~and furnishing of prospectus required.~~
 23
 590.28(1) 3rd Intentional burning of lands.
 24
 784.05(3) 3rd Storing or leaving a loaded firearm
 within reach of minor who uses it to
 inflict injury or death.
 25
 787.04(1) 3rd In violation of court order, take,
 entice, etc., minor beyond state limits.
 26
 806.13(1) (b) 3. 3rd Criminal mischief; damage \$1,000 or more
 to public communication or any other
 public service.
 27
 810.061(2) 3rd Impairing or impeding telephone or power
 to a dwelling; facilitating or
 furthering burglary.
 28
 810.09(2) (e) 3rd Trespassing on posted commercial
 horticulture property.
 29

Page 2 of 10

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28-01087-12 20121290__

812.014(2)(c)1. 3rd Grand theft, 3rd degree; \$300 or more
but less than \$5,000.

812.014(2)(d) 3rd Grand theft, 3rd degree; \$100 or more
but less than \$300, taken from
unenclosed curtilage of dwelling.

812.015(7) 3rd Possession, use, or attempted use of an
antishoplifting or inventory control
device countermeasure.

817.234(1)(a)2. 3rd False statement in support of insurance
claim.

817.481(3)(a) 3rd Obtain credit or purchase with false,
expired, counterfeit, etc., credit card,
value over \$300.

817.52(3) 3rd Failure to redeliver hired vehicle.

817.54 3rd With intent to defraud, obtain mortgage
note, etc., by false representation.

817.60(5) 3rd Dealing in credit cards of another.

817.60(6)(a) 3rd Forgery; purchase goods, services with
false card.

817.61 3rd Fraudulent use of credit cards over \$100

Page 3 of 10

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28-01087-12 20121290__

or more within 6 months.

826.04 3rd Knowingly marries or has sexual
intercourse with person to whom related.

831.01 3rd Forgery.

831.02 3rd Uttering forged instrument; utters or
publishes alteration with intent to
defraud.

831.07 3rd Forging bank bills, checks, drafts, or
promissory notes.

831.08 3rd Possessing 10 or more forged notes,
bills, checks, or drafts.

831.09 3rd Uttering forged notes, bills, checks,
drafts, or promissory notes.

831.11 3rd Bringing into the state forged bank
bills, checks, drafts, or notes.

832.05(3)(a) 3rd Cashing or depositing item with intent
to defraud.

843.08 3rd Falsely impersonating an officer.

893.13(2)(a)2. 3rd Purchase of any s. 893.03(1)(c),

Page 4 of 10

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28-01087-12 20121290__
 (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5.,
 (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9.,
 (3), or (4) drugs other than cannabis.

893.147(2) 3rd Manufacture or delivery of drug
 paraphernalia.

(d) LEVEL 4

Florida Statute	Felony Degree	Description
-----------------	---------------	-------------

316.1935(3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
-----------------	-----	--

499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
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499.0051(2)	3rd	Failure to authenticate pedigree papers.
-------------	-----	--

499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
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<u>517.07(1)</u>	<u>3rd</u>	<u>Failure to register securities.</u>
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<u>517.12(1)</u>	<u>3rd</u>	<u>Failure of dealer, associated person, or</u>
------------------	------------	---

28-01087-12 20121290__
issuer of securities to register.

784.07(2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.
---------------	-----	---

784.074(1) (c)	3rd	Battery of sexually violent predators facility staff.
----------------	-----	---

784.075	3rd	Battery on detention or commitment facility staff.
---------	-----	--

784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
---------	-----	--

784.08(2) (c)	3rd	Battery on a person 65 years of age or older.
---------------	-----	---

784.081(3)	3rd	Battery on specified official or employee.
------------	-----	--

784.082(3)	3rd	Battery by detained person on visitor or other detainee.
------------	-----	--

784.083(3)	3rd	Battery on code inspector.
------------	-----	----------------------------

784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
---------	-----	--

28-01087-12 20121290__

67 787.03(1) 3rd Interference with custody; wrongly takes
minor from appointed guardian.

68 787.04(2) 3rd Take, entice, or remove child beyond
state limits with criminal intent
pending custody proceedings.

69 787.04(3) 3rd Carrying child beyond state lines with
criminal intent to avoid producing child
at custody hearing or delivering to
designated person.

70 790.115(1) 3rd Exhibiting firearm or weapon within
1,000 feet of a school.

71 790.115(2)(b) 3rd Possessing electric weapon or device,
destructive device, or other weapon on
school property.

72 790.115(2)(c) 3rd Possessing firearm on school property.

73 800.04(7)(c) 3rd Lewd or lascivious exhibition; offender
less than 18 years.

74 810.02(4)(a) 3rd Burglary, or attempted burglary, of an
unoccupied structure; unarmed; no
assault or battery.

75

28-01087-12 20121290__

810.02(4)(b) 3rd Burglary, or attempted burglary, of an
unoccupied conveyance; unarmed; no
assault or battery.

76 810.06 3rd Burglary; possession of tools.

77 810.08(2)(c) 3rd Trespass on property, armed with firearm
or dangerous weapon.

78 812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000 or more
but less than \$20,000.

79 812.014 3rd Grand theft, 3rd degree, a will,
(2)(c)4.-10. firearm, motor vehicle, livestock, etc.

80 812.0195(2) 3rd Dealing in stolen property by use of the
Internet; property stolen \$300 or more.

81 817.563(1) 3rd Sell or deliver substance other than
controlled substance agreed upon,
excluding s. 893.03(5) drugs.

82 817.568(2)(a) 3rd Fraudulent use of personal
identification information.

83 817.625(2)(a) 3rd Fraudulent use of scanning device or
reencoder.

84 828.125(1) 2nd Kill, maim, or cause great bodily harm

28-01087-12 20121290__

or permanent breeding disability to any registered horse or cattle.

837.02(1) 3rd Perjury in official proceedings.

837.021(1) 3rd Make contradictory statements in official proceedings.

838.022 3rd Official misconduct.

839.13(2)(a) 3rd Falsifying records of an individual in the care and custody of a state agency.

839.13(2)(c) 3rd Falsifying records of the Department of Children and Family Services.

843.021 3rd Possession of a concealed handcuff key by a person in custody.

843.025 3rd Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

843.15(1)(a) 3rd Failure to appear while on bail for felony (bond estreature or bond jumping).

847.0135(5)(c) 3rd Lewd or lascivious exhibition using computer; offender less than 18 years.

28-01087-12 20121290__

874.05(1) 3rd Encouraging or recruiting another to join a criminal gang.

893.13(2)(a)1. 2nd Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).

914.14(2) 3rd Witnesses accepting bribes.

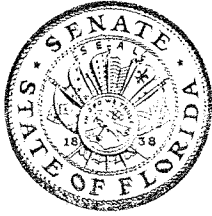
914.22(1) 3rd Force, threaten, etc., witness, victim, or informant.

914.23(2) 3rd Retaliation against a witness, victim, or informant, no bodily injury.

918.12 3rd Tampering with jurors.

934.215 3rd Use of two-way communications device to facilitate commission of a crime.

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



SENATOR JOE NEGRON
28th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Budget - Subcommittee on Health and Human Services
Appropriations, *Chair*
Budget, *Vice Chair*
Banking and Insurance
Communications, Energy, and Public Utilities
Higher Education
Reapportionment
Rules

SELECT COMMITTEE:

Protecting Florida's Children, *Chair*

JOINT COMMITTEE:

Legislative Budget Commission

January 16, 2012

The Honorable Greg Evers, Chair
Committee on Criminal Justice
510 Knott Building
404 S Monroe Street
Tallahassee, FL 32399-1100

Re: Senate Bill 1290

Dear Chairman Evers:

I would like to request Senate Bill 1290 relating to criminal penalties for violations of securities laws be placed on the agenda for the next scheduled committee meeting.

Thank you, in advance, for your consideration of this request.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Joe Negron", written over a horizontal line.

Joe Negron
State Senator
District 28

JN/hd

c: Amanda Cannon, Staff Director ✓

REPLY TO:

- 3500 SW Corporate Parkway, Suite 204, Palm City, Florida 34990 (772) 219-1665
- 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5088

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12
Meeting Date

Topic Securities Law Violations

Bill Number 1290
(if applicable)

Name Jacob Pewitt

Amendment Barcode _____
(if applicable)

Job Title Special Assistant to the Commissioner

Address 101 E Gaines St, Suite 118

Phone 850-410-9665

Street

Tallahassee

City

FL

State

32399

Zip

E-mail jacob.pewitt@flor.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 1580

INTRODUCER: Senator Latvala

SUBJECT: Local Administrative Action to Abate Public Nuisances and Criminal Gang Activity

DATE: January 31, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.			CA	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill amends s. 893.138, F.S., relating to local administrative actions to abate specified public nuisances and criminal gang activity, to do the following:

- Authorize a local administrative board to declare a place or premises to be a public nuisance if it is used on more than 2 occasions within a 6-month period as the site of the storage of a controlled substance with intent to sell or deliver the controlled substance off the premises.
- Specify the duration of a public nuisance order, when the term of the order may be extended, and the period of extension.
- Provide that the local ordinance supplementing s. 893.138, F.S., may include fines not to exceed \$250 per day for each day that the public nuisance activities involving a place or premises have occurred, including days outside the 6 month period in which the minimum number of public nuisance activities are shown to have occurred. (Some nuisance activities involve use of the place or premise on more than 2 occasions within a 6-month period for specified unlawful activities like unlawfully selling a controlled substance.)
- Authorize a local ordinance to provide for continuing jurisdiction over a place or premises that is subject to an extension of the public nuisance order.

This bill substantially amends section 893.138, Florida Statutes.

II. Present Situation:

Section 893.138, F.S., provides that when a place or premises has been used for any of the following activities, the place or premises may be declared a public nuisance and the public nuisance may be abated:

- On more than 2 occasions within a 6-month period, as the site of a violation of s. 796.07, F.S., which punishes various acts involving prostitution, lewdness, or assignation.¹
- On more than 2 occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance.²
- On 1 occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than 1 occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance.
- By a criminal gang for the purpose of conducting criminal gang activity as defined by s. 874.03, F.S.
- On more than 2 occasions within a 6-month period, as the site of a violation of s. 812.019, F.S., which punishes dealing in stolen property.

Section 893.138, F.S., also provides that when a pain-management clinic, as described in s. 458.3265, F.S., or s. 459.0137, F.S., has been used as the site of a violation of any of the following statutes, the pain-management clinic may be declared to be a public nuisance and the public nuisance may be abated:

- Section 784.011, F.S., s. 784.021, F.S., s. 784.03, F.S., or s. 784.045, F.S., all of which punish various acts of assault and battery.
- Section 810.02, F.S., which punishes burglary.
- Section 812.014, F.S., which punishes theft.
- Section 812.131, F.S., which punishes robbery by sudden snatching.
- Section 893.13, F.S., which punishes unlawful possession, sale, etc., of a controlled substance.

Section 893.138, F.S., also authorizes any county or municipality, by ordinance, to create an administrative board to hear complaints regarding the public nuisance activities.³ Any employee, officer, or resident of the county or municipality may bring a complaint before the board after giving not less than 3 days' written notice of such complaint to the owner of the place or premises at his or her last known address. After a hearing in which the board may consider any evidence, including evidence of the general reputation of the place or premises, and at which the owner of the premises shall have an opportunity to present evidence in his or her defense, the board may declare the place or premises to be a public nuisance as previously described.

If the board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such place or premises to adopt such procedure as may be appropriate under the

¹ "Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement. Section 796.07(1)(c), F.S.

² Section 893.138(10), F.S., states that the term "controlled substance" includes any substance sold in lieu of a controlled substance in violation of s. 817.563, F.S., or any imitation controlled substance defined in s. 817.564, F.S.

³ The statute specifies that the complaints are in regard to nuisances described in s. 893.138(2), F.S., which lists the nuisance activities applicable to places and premises. However s. 893.138(3), F.S., which lists the nuisance activities applicable to pain-management clinics, states that these activities may be abated pursuant to "the procedures provided in this section." Therefore, it appears that any county or municipality may also, by ordinance, create an administrative board to hear complaints regarding the public nuisance activities relating to pain-management clinics.

circumstances to abate any such nuisance or it may enter an order immediately prohibiting any of the following:

- The maintaining of the nuisance.
- The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof.
- The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.

The public nuisance order expires after 1 year or at such earlier time as is stated in the order.

The public nuisance order may be enforced pursuant to the procedures contained in s. 120.69, F.S. (Section 120.69, F.S., which is part of the Administrative Procedure Act, specifies procedures for proceedings in which the substantial interests of a party are determined by an agency, subject to exceptions.) This authorization does not subject a municipality that creates a board under s. 893.138, F.S., or the board so created, to any other provision of ch. 120, F.S.

Section 893.138, F.S., also authorizes the board to bring a complaint under s. 60.05, F.S. (issuance of an injunction abating a nuisance upon suit by the Attorney General; state, city, or county attorney; or any citizen of the county), seeking temporary and permanent injunctive relief against any public nuisance. This authorization does not restrict the right of any person to proceed under s. 60.05, F.S., against any public nuisance.

The statute may also be supplemented by a county or municipal ordinance, which may include, but is not limited to, provisions that:

- Establish additional penalties for public nuisances, including fines not to exceed \$250 per day.
- Provide for payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances.
- Provide for continuing jurisdiction for a period of 1 year over any place or premises that has been or is declared to be a public nuisance.
- Establish penalties, including fines not to exceed \$500 per day for recurring public nuisances.
- Provide for the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order.
- Provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order.
- Provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure, except that no lien may be foreclosed on real property which is a homestead.

Where a local government seeks to bring an administrative action based on a stolen property nuisance against a property owner operating an establishment where multiple tenants on one site conduct their own retail business, the property owner shall not be subject to a lien against his or her property or the prohibition of operation provision if the property owner evicts the business

declared to be a nuisance within 90 days after notification by registered mail to the property owner of a second stolen property conviction of the tenant.

The total fines imposed pursuant to the authority of s. 893.138, F.S., shall not exceed \$15,000.

Nothing contained within s. 893.138, F.S., prohibits a county or municipality from proceeding against a public nuisance by any other means.

III. Effect of Proposed Changes:

The bill amends s. 893.138, F.S., relating to local administrative actions to abate specified public nuisances and criminal gang activity, to do the following:

- Authorize a local administrative board to declare a place or premises to be a public nuisance if it is used on more than 2 occasions within a 6-month period as the site of the storage of a controlled substance with intent to sell or deliver the controlled substance off the premises.
- Provide that the public nuisance order expires after 1 year or at an earlier time if so stated in the order unless the person subject to the order has violated the order during its term.
- Require the board to conduct a hearing to determine whether the person violated the order after providing notice to the person whose activities have been declared to be a public nuisance.
- Provide that if the board finds the person violated the order, the board may extend the term of the order by up to 1 additional year and may impose an additional penalty to the extent authorized by s. 893.138, F.S., and by supplemental local ordinance.
- Provide that the local ordinance supplementing s. 893.138, F.S., may include fines not to exceed \$250 per day for each day that the public nuisance activities involving a place or premises have occurred, including days outside the 6-month period in which the minimum number of public nuisance activities are shown to have occurred. (Under s. 893.138, F.S., the board may issue a public nuisance order when it finds that a place or premises has been used on more than 2 occasions within a 6-month period for prostitution, lewdness, assignation, specified drug activity, or dealing in stolen property.)
- Authorize a local ordinance to provide for continuing jurisdiction over a place or premises that is subject to an extension of the public nuisance order.

The effective date of the bill is 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:

The bill potentially impacts those persons subject to fines as specified in the bill (see “Effect of Proposed Changes” section of this analysis) for the public nuisance.

C. Government Sector Impact:

There may be a cost-benefit to municipal and county governments if the provisions of the bill lead to a reduction in criminal activities in those places or premises declared a public nuisance, such as reducing impact on law enforcement resources. There may also be a benefit to municipal and county governments from the fines collected for the public nuisance.

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will not have any prison bed impact.

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.

By Senator Latvala

16-00705-12

20121580

A bill to be entitled

An act relating to local administrative action to abate public nuisances and criminal gang activity; amending s. 893.138, F.S.; authorizing a local administrative board to declare a place to be a public nuisance if the place is used on more than two occasions within a 6-month period as the site of the storage of a controlled substance with intent to sell or deliver the controlled substance; providing that an order entered against a person for a public nuisance expires after 1 year or at an earlier time if so stated in the order unless the person has violated the order during the term of the order; requiring that the board conduct a hearing to determine whether the person violated the administrative order; authorizing the board to extend the term of the order by up to 1 additional year and to impose a penalty if the board finds that the person violated the order; authorizing a county or municipal ordinance to include fines for days of public nuisance activities outside the 6-month period in which the minimum number of activities are shown to have occurred; authorizing a local ordinance to provide for continuing jurisdiction over a place or premises that are subject to an extension of the administrative order; providing an effective date.

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

Section 1. Subsections (2), (6), and (11) of section

Page 1 of 4

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

16-00705-12

20121580

893.138, Florida Statutes, are amended to read:

893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.—

(2) Any place or premises that has been used:

(a) On more than two occasions within a 6-month period, as the site of a violation of s. 796.07;

(b) On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of a ~~any~~ controlled substance, or as the site of the storage of a controlled substance with intent to sell or deliver the controlled substance off the premises;

(c) On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony, and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of a ~~any~~ controlled substance;

(d) By a criminal gang for the purpose of conducting criminal gang-related ~~gang~~ activity as defined in ~~by~~ s. 874.03; or

(e) On more than two occasions within a 6-month period, as the site of a violation of s. 812.019 relating to dealing in stolen property,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to ~~the procedures provided in~~ this section.

(6) An order entered under subsection (4) expires ~~shall expire~~ after 1 year or at such earlier time as is stated in the order unless the person has violated the order during the term

Page 2 of 4

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

16-00705-12 20121580
 59 of the order. After providing notice to the person whose
 60 activities have been declared to be a public nuisance, the board
 61 shall conduct a hearing to determine whether the person violated
 62 the administrative order entered under subsection (5). If the
 63 board finds that the person violated the order, the board may
 64 extend the term of the order by up to 1 additional year and may
 65 impose an additional penalty to the extent authorized by this
 66 section and by a supplemental county or municipal ordinance.

(11) ~~The provisions of~~ This section may be supplemented by
 a county or municipal ordinance. The ordinance may include, but
 need ~~is~~ not ~~be~~ limited to, provisions that establish additional
 penalties for public nuisances, including fines not to exceed
 \$250 per day for each day that the public nuisance activities
described in subsection (2) have occurred, including days
outside the 6-month period in which the minimum number of public
nuisance activities are shown to have occurred. The ordinance
may also, provide for the payment of reasonable costs, including
 reasonable attorney fees associated with investigations of and
 hearings on public nuisances; provide for continuing
 jurisdiction for a period of 1 year over any place or premises
 that have ~~has~~ been or are ~~is~~ declared to be a public nuisance,
subject to an extension for up to 1 additional year as provided
in subsection (6); establish penalties, including fines not to
exceed \$500 per day for recurring public nuisances; provide for
the recording of orders on public nuisances so that notice must
be given to subsequent purchasers, successors in interest, or
assigns of the real property that is the subject of the order;
 provide that recorded orders on public nuisances may become
 liens against the real property that is the subject of the

16-00705-12 20121580
 88 order; and provide for the foreclosure of the property that is
 89 subject to a lien and the recovery of all costs, including
 90 reasonable attorney fees, associated with the recording of
 91 orders and foreclosure. ~~A No~~ lien created pursuant to ~~the~~
 92 ~~provisions of~~ this section may not be foreclosed on real
 93 property that ~~which~~ is a homestead under s. 4, Art. X of the
 94 State Constitution. ~~When~~ Where a local government seeks to bring
 95 an administrative action, based on a stolen property nuisance,
 96 against a property owner operating an establishment where
 97 multiple tenants, on one site, conduct their own retail
 98 business, the property owner is ~~shall~~ not ~~be~~ subject to a lien
 99 against his or her property or the prohibition of operation
 100 provision if the property owner evicts the business declared to
 101 be a nuisance within 90 days after notification by registered
 102 mail to the property owner of a second stolen property
 103 conviction of the tenant. The total fines imposed pursuant to
 104 ~~the authority of this section may~~ shall not exceed \$15,000.
 105 ~~Nothing contained within~~ This section does not prohibit
 106 ~~prohibits~~ a county or municipality from proceeding against a
 107 public nuisance by any other means.

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



SENATOR JACK LATVALA
16th District

Tallahassee, Florida 32399-1100

COMMITTEES:

Transportation, *Chair*
Budget - Subcommittee on General Government
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Children, Families, and Elder Affairs
Environmental Preservation and Conservation
Governmental Oversight and Accountability
Reapportionment

January 25, 2011

The Honorable Senator Greg Evers, Chair
Senate Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Evers:

I respectfully request consideration of Senate Bill 1580 regarding Local Administrative Action to Abate Public Nuisances and Criminal Gang Activity at your earliest convenience.

I have filed this bill in order to provide local governments with additional tools they need in order to effectively reduce the impact that criminal activity has on the businesses and residents within their communities. I would greatly appreciate the opportunity to present this legislation to the Committee on Criminal Justice as soon as possible.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

Jack Latvala
State Senator
District 16

JL: JW

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

REPLY TO:

- ☐ 12425 28th Street North, Suite 102, St. Petersburg, Florida 33716 (727) 556-6500
- ☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5075

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLIS

MICHAEL S. "MIKE" BENNETT

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.9.12

Meeting Date

Topic Relating to Nuisance Abatement

Bill Number 1580
(if applicable)

Name Wayne Finley

Amendment Barcode _____
(if applicable)

Job Title Legislative Advocacy

Address Mayor's Office POB 2842

Phone 813.767.5503

St. Petersburg FL 33731
City State Zip

E-mail wayne.finley@stpete.org

Speaking: ☒ For ☐ Against ☐ Information

Representing City of St. Petersburg

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 1846

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Criminal Gang Prevention

DATE: February 9, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" 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 does the following to enhance criminal gang intervention and prevention:

- Increases the misdemeanor criminal penalties for specified trespassing offenses in school safety zones by a person convicted of gang-related offenses (becomes a first instead of a second degree misdemeanor);
- Increases the felony criminal penalties for intentionally causing, encouraging, soliciting, or recruiting a person under 13 years of age to become a gang member (becomes a second instead of a third degree felony, except if it is a second or subsequent recruiting conviction, it becomes a first degree felony);
- Authorizes a county or municipal detention facility to designate a person to be responsible for determining the gang status of inmates entering the facility as well as assessing inmates for gang activity or affiliation;
- Amends the criminal gang multiplier in s. 921.0024, F.S., so that the multiplier will be able to be applied with a finding by the judge (rather than the jury) that the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang in instances where the lowest permissible sentence does not exceed the statutory maximum sentence for the offense; and

- Makes technical and conforming changes.

This bill substantially amends the following sections of the Florida Statutes: 810.0975, 874.05, 951.23, and 921.0024. Sections 435.04 and 921.0022 are amended to conform to changes made by the bill.

II. Present Situation:

School Safety Zones

A “school safety zone” is defined as being in, on, or within 500 feet of real property owned by or leased to any public or private elementary, middle, or high school or school board which is used for elementary, middle, or high school education.¹ Principals are required to notify law enforcement to prohibit persons who have no legitimate business or any other authorization from loitering in a school safety zone.²

Section 810.0975, F.S., criminalizes trespassing within a school safety zone or remaining there with no legitimate business between a certain time period as a misdemeanor offense. It is a second degree misdemeanor,³ during the school session and one hour before and after the school session, for a person to trespass within a school safety zone or to remain there when the person does not have legitimate business to conduct or any other authorization to be in the school safety zone.⁴

It is also a second degree misdemeanor for a person, with no legitimate business to conduct or having no other authorization within a school safety zone, to willfully fail to leave when requested to do so by the principal who has a reasonable belief that the person is going to commit a crime or intimidate or harass students within the school safety zone.⁵

Criminal Gang Enforcement and Prevention

Chapter 874, F.S., governs criminal gang enforcement and prevention, including in part, statutes that do the following: set forth definitions of criminal gangs, criminal gang-related activities, criminal gang member, and criminal gang associate; establish a statewide criminal gang database within the Florida Department of Law Enforcement (FDLE)⁶; provide enhanced penalties for gang-related offenses; and proscribe encouraging, soliciting, or recruiting criminal gang membership.⁷

¹ Section 810.0975(1), F.S.

² Section 810.0975(2)(a), F.S.

³ A second degree misdemeanor is punishable by potentially serving up to 60 days in county jail and paying up to \$500 in fines. Sections 775.082 and 775.083, F.S.

⁴ Section 810.0975(2)(b), F.S.

⁵ Section 810.0975(2)(c), F.S.

⁶ Pursuant to s. 874.09, F.S., the Florida Department of Law Enforcement manages a statewide criminal gang database where gang intelligence information is shared among all law enforcement agencies statewide. Information is entered into the database by local law enforcement agencies who, after carrying out any arrest of any individual whom they believe is a member or associate of a criminal gang, may create or update that individual’s electronic file within the database.

⁷ Sections 874.03, 874.09, 874.04, and 874.05, F.S.

Currently, it is a third degree felony⁸ for committing a first offense of intentionally causing, encouraging, soliciting, or recruiting another person to become a gang member if membership is dependent upon the commission or continued commission of any crime.⁹ This offense is ranked in Level 4 (22 sentencing points) of the offense severity ranking chart (ranking chart).¹⁰ However, the commission of this crime a second or subsequent time results in a second degree felony penalty,¹¹ ranked in Level 5 (28 sentencing points) of the ranking chart.

County and Municipal Detention Facilities

Section 951.23, F.S., includes the following as it relates to county and municipal detention facilities: definitions; authorization for an inmate commissary and welfare fund; prohibitions against violating jail rules; and model standards and requirements for sheriffs and chief correctional officers operating county and municipal detention facilities.¹² There is currently no statutory provision addressing gang prevention in a county or municipal detention facility.

Criminal Gang Offenses and the Sentencing Multiplier

Criminal offenses are ranked in the ranking chart from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points, which are assigned for factors such as: the offense for which the defendant is being sentenced; victim injury; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. The Criminal Punishment Code worksheet, found in s. 921.0024, F.S., is used to compute a defendant's total sentence points.

The Criminal Punishment Code worksheet contains a variety of sentencing multipliers that act to multiply a defendant's sentencing points by a certain number, thereby increasing the defendant's lowest permissible sentence. The worksheet currently contains a criminal gang multiplier that multiplies a defendant's sentence points by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang as prohibited under s. 874.04, F.S.

Section 874.04, F.S., provides that upon a finding by the factfinder that a defendant committed the charged offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang, the penalty for such offense can be enhanced. The statute specifies the extent to

⁸ A third degree felony is punishable by potentially serving up to five years in prison and paying up to \$5,000 in fines. Sections 775.082 and 775.083, F.S.

⁹ Section 874.05(1), F.S.

¹⁰ Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points, which are assigned for factors including: the offense for which the defendant is being sentenced; victim injury; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction (i.e., jail). If the total sentence points exceed 44 points, a prison sentence is the lowest permissible sentence.

¹¹ Section 874.05(2), F.S. A second degree felony is punishable by potentially serving up to 15 years in prison and paying up to \$10,000 in fines. Sections 775.082 and 775.083, F.S.

¹² Section 951.23(1), (4), (9), (10), F.S.

which such enhancement can be made and mandates each of the findings required as a basis for such enhancement to be found beyond a reasonable doubt.

As noted above, the criminal gang multiplier in the worksheet multiplies a defendant's sentence points by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang *as prohibited under s. 874.04, F.S.* Section 874.04, F.S., requires the factfinder (i.e., the jury) to find that a defendant committed the offense for such purposes. This limits the instances in which the criminal gang multiplier can be used to those instances in which the jury has made the required finding. If the reference to s. 874.04, F.S., were removed from the multiplier, a *judge* could make the required finding so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the charged offense.¹³

III. Effect of Proposed Changes:

School Safety Zones

The bill enhances criminal penalties from a second degree misdemeanor to a first degree misdemeanor¹⁴ if a person trespasses or remains with no legitimate business to conduct or willfully fails to leave when requested to do so by the principal within a school safety zone and such person has previously been convicted of a gang-related offense under s. 874, F.S.

Criminal Gang Enforcement and Prevention

The bill also enhances criminal penalties for intentionally causing, encouraging, soliciting, or recruiting a person younger than 13 years of age to become a gang member. The penalty goes from a third degree felony to a second degree felony,¹⁵ unless it is the second or subsequent violation. If it is a second or subsequent violation of recruiting a gang member, it becomes a first degree felony¹⁶ rather than a second degree felony under the bill.

County and Municipal Detention Facilities

The bill adds a subsection to s. 951.23, F.S., authorizing a county or municipal detention facility to designate a person to be responsible for determining the gang status of inmates entering the facility as well as assessing inmates for gang activity or affiliation. Gang status and assessment are to be conducted using the criteria found in s. 874.03, F.S., which defines a criminal gang member, a criminal gang associate, and criminal gang-related activity. The bill also provides that such designated person should at least once every two weeks reconcile information with the arresting law enforcement agency and the statewide criminal gang database within FDLE.

¹³ See *Mathew v. State*, 837 So.2d 1167 (Fla. 4th DCA 2003); *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

¹⁴ A first degree misdemeanor is punishable by potentially serving up to one year in jail and paying up to \$1,000 in fines. Sections 775.082 and 775.083, F.S.

¹⁵ See *supra* note 11.

¹⁶ A first degree felony is punishable by potentially serving up to 30 years in prison and paying up to \$10,000 in fines. Sections 775.082 and 775.083, F.S.

Criminal Gang-Related Offenses and Sentencing Multipliers

The bill amends the criminal gang multiplier in s. 921.0024, F.S., to specify that a defendant's sentence points are multiplied by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang *as defined in s. 874.03, F.S.* As a result, the multiplier will be able to be applied without a finding by *the jury* that the defendant committed the offense for the purposes of benefitting, promoting, or furthering the interests of a criminal gang so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the offense.

Miscellaneous

The bill also makes some technical and conforming changes by revising the level 2 screening standards in s. 435.04, F.S., and the Criminal Punishment Code in s. 921.0975, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who trespass or remain with no legitimate business within a school safety zone and have a prior conviction for a gang-related offense are subject to a first degree misdemeanor penalty (serving up to potentially one year in jail and paying up to \$1,000 in fines).

Persons who intentionally recruit someone younger than 13 to become a gang member are subject to a second degree felony (serving up to potentially 15 years in prison and paying up to \$10,000 in fines), unless it is a second or subsequent offense. If it is a second or subsequent offense, it becomes a first degree felony, punishable by serving up to potentially 30 years in prison and paying up to \$10,000 in fines.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2012 and found that this bill will have an insignificant impact on prison beds.

Enhancing the misdemeanor penalty from a second to a first degree misdemeanor may result in a fiscal impact upon local jails because of increased incarceration.

A local law enforcement agency choosing to designate a person within its county or municipal detention facility to monitor gang activity may incur some additional expenses, but the bill does not mandate this requirement on any agency.

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 February 9, 2012:

Clarifies that the criminal gang multiplier may only be applied when the lowest permissible sentence does not exceed the statutory maximum sentence for the charged offense.

B. Amendments:

None.



197002

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2012	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 103
and insert:
.



402810

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2012	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 458
and insert:
~~874.04~~, the subtotal sentence points are multiplied by 1.5. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under ch. 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

By Senator Evers

2-01451-12

20121846

A bill to be entitled

An act relating to criminal gang prevention; amending s. 810.0975, F.S.; providing enhanced criminal penalties for certain trespassing offenses in school safety zones by a person convicted of certain gang-related offenses; amending s. 874.05, F.S.; providing enhanced criminal penalties for a person who intentionally causes, encourages, solicits, or recruits another person under a specified age to become a criminal gang member in certain circumstances; amending s. 951.23, F.S.; authorizing county and municipal detention facilities to designate an individual to be responsible for determining the gang status of each inmate entering the facility and to assess each current inmate for gang activity or gang affiliation; providing duties of such individuals; amending ss. 435.04 and 921.0022, F.S.; conforming cross-references and assigning offense severity rankings for violations of s. 874.05, F.S.; amending s. 921.0024, F.S.; revising the criteria for application of the sentencing multiplier for offenses related to criminal gangs; providing an effective date.

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

Section 1. Section 810.0975, Florida Statutes, is amended to read:

810.0975 School safety zones; definition; trespass

Page 1 of 35

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

2-01451-12

20121846

prohibited; penalty.—

(1) For the purposes of this section, the term “school safety zone” means in, on, or within 500 feet of any real property owned by or leased to any public or private elementary, middle, or high school or school board and used for elementary, middle, or high school education.

(2) (a) Each principal or designee of each public or private school in this state shall notify the appropriate law enforcement agency to prohibit any person from loitering in the school safety zone who does not have legitimate business in the school safety zone or any other authorization, or license to enter or remain in the school safety zone or does not otherwise have invitee status in the designated safety zone.

(b) 1. During the period from 1 hour prior to the start of a school session until 1 hour after the conclusion of a school session, it is unlawful for any person to enter the premises or trespass within a school safety zone or to remain on such premises or within such school safety zone when that person does not have legitimate business in the school safety zone or any other authorization, license, or invitation to enter or remain in the school safety zone.

2.a. Except as provided in sub-subparagraph b., a ~~Any~~ person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

b. A person who violates this subsection and who has been previously convicted of any offense contained in chapter 874 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Page 2 of 35

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

2-01451-12

20121846

(c) 1. Except as provided in subparagraph 2., a ~~Any~~ person who does not have legitimate business in the school safety zone or any other authorization, license, or invitation to enter or remain in the school safety zone who shall willfully fail to remove himself or herself from the school safety zone after the principal or designee, having a reasonable belief that he or she will commit a crime or is engaged in harassment or intimidation of students entering or leaving school property, requests him or her to leave the school safety zone commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person who violates subparagraph 1. and who has been previously convicted of any offense contained in chapter 874 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Nothing in This section does not ~~shall be construed to~~ abridge or infringe upon the right of any person to peaceably assemble and protest.

(4) ~~(3)~~ This section does not apply to residents or persons engaged in the operation of a licensed commercial business within the school safety zone.

Section 2. Section 874.05, Florida Statutes, is amended to read:

874.05 Causing, encouraging, soliciting, or recruiting criminal gang membership.—

(1) ~~(a)~~ Except as provided in paragraph (b) ~~subsection (2)~~, a person who intentionally causes, encourages, solicits, or recruits another person to become a criminal gang member where a condition of membership or continued membership is the

2-01451-12

20121846

commission of any crime commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) ~~(2)~~ A person who commits a second or subsequent violation of this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) (a) Except as provided in paragraph (b), a person who intentionally causes, encourages, solicits, or recruits another person under 13 years of age to become a criminal gang member where a condition of membership or continued membership is the commission of any crime commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who commits a second or subsequent violation of this subsection commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 and s. 921.243.

Section 3. Subsection (11) is added to section 951.23, Florida Statutes, to read:

951.23 County and municipal detention facilities; definitions; administration; standards and requirements.—

(11) GANG STATUS OF INMATES.—A county or municipal detention facility may designate an individual to be responsible for determining the gang status of each inmate entering the facility using the criteria in s. 874.03 and assess each current inmate for any gang activity or gang affiliation using those criteria. The individual should at least once biweekly reconcile information with the arresting law enforcement agency and the statewide criminal gang database.

Section 4. Paragraph (qq) of subsection (2) of section

2-01451-12 20121846__

435.04, Florida Statutes, is amended to read:

435.04 Level 2 screening standards.—

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

(qq) Section 874.05(1), relating to encouraging or recruiting another to join a criminal gang.

Section 5. Paragraphs (d), (e), and (g) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver pedigree

2-01451-12 20121846__

papers.

499.0051(2) 3rd Failure to authenticate pedigree papers.

499.0051(6) 2nd Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.

784.07(2) (b) 3rd Battery of law enforcement officer, firefighter, etc.

784.074(1) (c) 3rd Battery of sexually violent predators facility staff.

784.075 3rd Battery on detention or commitment facility staff.

784.078 3rd Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.

784.08(2) (c) 3rd Battery on a person 65 years of age or older.

784.081(3) 3rd Battery on specified official or employee.

784.082(3) 3rd Battery by detained person on visitor or other detainee.

2-01451-12 20121846__

147 784.083(3) 3rd Battery on code inspector.

148 784.085 3rd Battery of child by throwing, tossing,
projecting, or expelling certain fluids
or materials.

149 787.03(1) 3rd Interference with custody; wrongly takes
minor from appointed guardian.

150 787.04(2) 3rd Take, entice, or remove child beyond
state limits with criminal intent
pending custody proceedings.

151 787.04(3) 3rd Carrying child beyond state lines with
criminal intent to avoid producing child
at custody hearing or delivering to
designated person.

152 790.115(1) 3rd Exhibiting firearm or weapon within
1,000 feet of a school.

153 790.115(2)(b) 3rd Possessing electric weapon or device,
destructive device, or other weapon on
school property.

154 790.115(2)(c) 3rd Possessing firearm on school property.

155 800.04(7)(c) 3rd Lewd or lascivious exhibition; offender

2-01451-12 20121846__

less than 18 years.

156 810.02(4)(a) 3rd Burglary, or attempted burglary, of an
unoccupied structure; unarmed; no
assault or battery.

157 810.02(4)(b) 3rd Burglary, or attempted burglary, of an
unoccupied conveyance; unarmed; no
assault or battery.

158 810.06 3rd Burglary; possession of tools.

159 810.08(2)(c) 3rd Trespass on property, armed with firearm
or dangerous weapon.

160 812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000 or more
but less than \$20,000.

161 812.014 3rd Grand theft, 3rd degree, a will,
(2)(c)4.-10. firearm, motor vehicle, livestock, etc.

162 812.0195(2) 3rd Dealing in stolen property by use of the
Internet; property stolen \$300 or more.

163 817.563(1) 3rd Sell or deliver substance other than
controlled substance agreed upon,
excluding s. 893.03(5) drugs.

164 817.568(2)(a) 3rd Fraudulent use of personal

2-01451-12 20121846__

identification information.

817.625(2)(a) 3rd Fraudulent use of scanning device or reencoder.

828.125(1) 2nd Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.

837.02(1) 3rd Perjury in official proceedings.

837.021(1) 3rd Make contradictory statements in official proceedings.

838.022 3rd Official misconduct.

839.13(2)(a) 3rd Falsifying records of an individual in the care and custody of a state agency.

839.13(2)(c) 3rd Falsifying records of the Department of Children and Family Services.

843.021 3rd Possession of a concealed handcuff key by a person in custody.

843.025 3rd Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

2-01451-12 20121846__

843.15(1)(a) 3rd Failure to appear while on bail for felony (bond estreature or bond jumping).

847.0135(5)(c) 3rd Lewd or lascivious exhibition using computer; offender less than 18 years.

874.05(1)(a) 3rd Encouraging or recruiting another to join a criminal gang.

893.13(2)(a)1. 2nd Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).

914.14(2) 3rd Witnesses accepting bribes.

914.22(1) 3rd Force, threaten, etc., witness, victim, or informant.

914.23(2) 3rd Retaliation against a witness, victim, or informant, no bodily injury.

918.12 3rd Tampering with jurors.

934.215 3rd Use of two-way communications device to facilitate commission of a crime.

(e) LEVEL 5

	2-01451-12		20121846	
	Florida	Felony		
	Statute	Degree	Description	
185	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.	
186	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.	
187	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.	
188	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.	
189	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.	
190	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.	
191	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.	
192	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.	
193				

	2-01451-12		20121846	
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.	
194	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.	
195	790.01(2)	3rd	Carrying a concealed firearm.	
196	790.162	2nd	Threat to throw or discharge destructive device.	
197	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.	
198	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.	
199	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.	
200	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.	
201	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.	
202				

	2-01451-12		20121846	
203	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.	
204	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.	
205	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.	
206	812.019(1)	2nd	Stolen property; dealing in or trafficking in.	
207	812.131(2)(b)	3rd	Robbery by sudden snatching.	
208	812.16(2)	3rd	Owning, operating, or conducting a chop shop.	
209	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.	
210	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.	
	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property	

	2-01451-12		20121846	
211			values relating to the solvency of an insuring entity.	
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.	
212	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.	
213	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.	
214	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.	
215	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.	
216	839.13(2)(b)	2nd	Falsifying records of an individual in	

2-01451-12 20121846

the care and custody of a state agency
involving great bodily harm or death.

217 843.01 3rd Resist officer with violence to person;
resist arrest with violence.

218 847.0135(5)(b) 2nd Lewd or lascivious exhibition using
computer; offender 18 years or older.

219 847.0137 3rd Transmission of pornography by
(2) & (3) electronic device or equipment.

220 847.0138 3rd Transmission of material harmful to
(2) & (3) minors to a minor by electronic device
or equipment.

221 874.05(1)(b) 2nd Encouraging or recruiting another to
~~874.05(2)~~ join a criminal gang; second or
subsequent offense.

222 874.05(2)(a) 2nd Encouraging or recruiting person under
13 to join a criminal gang.

223 893.13(1)(a)1. 2nd Sell, manufacture, or deliver cocaine
(or other s. 893.03(1)(a), (1)(b),
(1)(d), (2)(a), (2)(b), or (2)(c)4.
drugs).

224 893.13(1)(c)2. 2nd Sell, manufacture, or deliver cannabis

2-01451-12 20121846

(or other s. 893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
(2)(c)7., (2)(c)8., (2)(c)9., (3), or
(4) drugs) within 1,000 feet of a child
care facility, school, or state, county,
or municipal park or publicly owned
recreational facility or community
center.

225 893.13(1)(d)1. 1st Sell, manufacture, or deliver cocaine
(or other s. 893.03(1)(a), (1)(b),
(1)(d), (2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of university.

226 893.13(1)(e)2. 2nd Sell, manufacture, or deliver cannabis
or other drug prohibited under s.
893.03(1)(c), (2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3), or (4) within
1,000 feet of property used for
religious services or a specified
business site.

227 893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine
(or other s. 893.03(1)(a), (1)(b),
(1)(d), or (2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of public
housing facility.

228

2-01451-12 20121846
 893.13(4)(b) 2nd Deliver to minor cannabis (or other s.
 893.03(1)(c), (2)(c)1., (2)(c)2.,
 (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,
 (2)(c)8., (2)(c)9., (3), or (4) drugs).

893.1351(1) 3rd Ownership, lease, or rental for
 trafficking in or manufacturing of
 controlled substance.

(g) LEVEL 7

Florida Statute	Felony Degree	Description
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316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
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316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
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316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
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327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
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2-01451-12 20121846
 402.319(2) 2nd Misrepresentation and negligence or
 intentional act resulting in great
 bodily harm, permanent disfigurement,
 permanent disability, or death.

409.920 3rd Medicaid provider fraud; \$10,000 or
 (2)(b)1.a. less.

409.920 2nd Medicaid provider fraud; more than
 (2)(b)1.b. \$10,000, but less than \$50,000.

456.065(2) 3rd Practicing a health care profession
 without a license.

456.065(2) 2nd Practicing a health care profession
 without a license which results in
 serious bodily injury.

458.327(1) 3rd Practicing medicine without a license.

459.013(1) 3rd Practicing osteopathic medicine without
 a license.

460.411(1) 3rd Practicing chiropractic medicine
 without a license.

461.012(1) 3rd Practicing podiatric medicine without a
 license.

2-01451-12 20121846__

462.17 3rd Practicing naturopathy without a license.

246 463.015(1) 3rd Practicing optometry without a license.

247 464.016(1) 3rd Practicing nursing without a license.

248 465.015(2) 3rd Practicing pharmacy without a license.

249 466.026(1) 3rd Practicing dentistry or dental hygiene without a license.

250 467.201 3rd Practicing midwifery without a license.

251 468.366 3rd Delivering respiratory care services without a license.

252 483.828(1) 3rd Practicing as clinical laboratory personnel without a license.

253 483.901(9) 3rd Practicing medical physics without a license.

254 484.013(1)(c) 3rd Preparing or dispensing optical devices without a prescription.

255 484.053 3rd Dispensing hearing aids without a license.

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2-01451-12 20121846__

494.0018(2) 1st Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.

257 560.123(8)(b)1. 3rd Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.

258 560.125(5)(a) 3rd Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.

259 655.50(10)(b)1. 3rd Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.

260 775.21(10)(a) 3rd Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.

261 775.21(10)(b) 3rd Sexual predator working where children regularly congregate.

262 775.21(10)(g) 3rd Failure to report or providing false information about a sexual predator;

2-01451-12 20121846

263 harbor or conceal a sexual predator.

782.051(3) 2nd Attempted felony murder of a person by
a person other than the perpetrator or
the perpetrator of an attempted felony.

264 782.07(1) 2nd Killing of a human being by the act,
procurement, or culpable negligence of
another (manslaughter).

265 782.071 2nd Killing of a human being or viable
fetus by the operation of a motor
vehicle in a reckless manner (vehicular
homicide).

266 782.072 2nd Killing of a human being by the
operation of a vessel in a reckless
manner (vessel homicide).

267 784.045(1)(a)1. 2nd Aggravated battery; intentionally
causing great bodily harm or
disfigurement.

268 784.045(1)(a)2. 2nd Aggravated battery; using deadly
weapon.

269 784.045(1)(b) 2nd Aggravated battery; perpetrator aware
victim pregnant.

270

Page 21 of 35

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

2-01451-12 20121846

784.048(4) 3rd Aggravated stalking; violation of
injunction or court order.

271 784.048(7) 3rd Aggravated stalking; violation of court
order.

272 784.07(2)(d) 1st Aggravated battery on law enforcement
officer.

273 784.074(1)(a) 1st Aggravated battery on sexually violent
predators facility staff.

274 784.08(2)(a) 1st Aggravated battery on a person 65 years
of age or older.

275 784.081(1) 1st Aggravated battery on specified
official or employee.

276 784.082(1) 1st Aggravated battery by detained person
on visitor or other detainee.

277 784.083(1) 1st Aggravated battery on code inspector.

278 790.07(4) 1st Specified weapons violation subsequent
to previous conviction of s. 790.07(1)
or (2).

279 790.16(1) 1st Discharge of a machine gun under
specified circumstances.

Page 22 of 35

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

2-01451-12 20121846

280 790.165(2) 2nd Manufacture, sell, possess, or deliver
hoax bomb.

281 790.165(3) 2nd Possessing, displaying, or threatening
to use any hoax bomb while committing
or attempting to commit a felony.

282 790.166(3) 2nd Possessing, selling, using, or
attempting to use a hoax weapon of mass
destruction.

283 790.166(4) 2nd Possessing, displaying, or threatening
to use a hoax weapon of mass
destruction while committing or
attempting to commit a felony.

284 790.23 1st,PBL Possession of a firearm by a person who
qualifies for the penalty enhancements
provided for in s. 874.04.

285 794.08(4) 3rd Female genital mutilation; consent by a
parent, guardian, or a person in
custodial authority to a victim younger
than 18 years of age.

286 796.03 2nd Procuring any person under 16 years for
prostitution.

287

2-01451-12 20121846

800.04(5)(c)1. 2nd Lewd or lascivious molestation; victim
less than 12 years of age; offender
less than 18 years.

288 800.04(5)(c)2. 2nd Lewd or lascivious molestation; victim
12 years of age or older but less than
16 years; offender 18 years or older.

289 806.01(2) 2nd Maliciously damage structure by fire or
explosive.

290 810.02(3)(a) 2nd Burglary of occupied dwelling; unarmed;
no assault or battery.

291 810.02(3)(b) 2nd Burglary of unoccupied dwelling;
unarmed; no assault or battery.

292 810.02(3)(d) 2nd Burglary of occupied conveyance;
unarmed; no assault or battery.

293 810.02(3)(e) 2nd Burglary of authorized emergency
vehicle.

294 812.014(2)(a)1. 1st Property stolen, valued at \$100,000 or
more or a semitrailer deployed by a law
enforcement officer; property stolen
while causing other property damage;
1st degree grand theft.

295

2-01451-12 20121846__

812.014(2)(b)2. 2nd Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.

812.014(2)(b)3. 2nd Property stolen, emergency medical equipment; 2nd degree grand theft.

812.014(2)(b)4. 2nd Property stolen, law enforcement equipment from authorized emergency vehicle.

812.0145(2)(a) 1st Theft from person 65 years of age or older; \$50,000 or more.

812.019(2) 1st Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

812.131(2)(a) 2nd Robbery by sudden snatching.

812.133(2)(b) 1st Carjacking; no firearm, deadly weapon, or other weapon.

817.234(8)(a) 2nd Solicitation of motor vehicle accident victims with intent to defraud.

817.234(9) 2nd Organizing, planning, or participating in an intentional motor vehicle collision.

2-01451-12 20121846__

817.234(11)(c) 1st Insurance fraud; property value \$100,000 or more.

817.2341 1st Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.

825.102(3)(b) 2nd Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

825.103(2)(b) 2nd Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.

827.03(3)(b) 2nd Neglect of a child causing great bodily harm, disability, or disfigurement.

827.04(3) 3rd Impregnation of a child under 16 years of age by person 21 years of age or older.

837.05(2) 3rd Giving false information about alleged capital felony to a law enforcement officer.

2-01451-12 20121846__

311 838.015 2nd Bribery.

312 838.016 2nd Unlawful compensation or reward for
official behavior.

313 838.021(3)(a) 2nd Unlawful harm to a public servant.

314 838.22 2nd Bid tampering.

315 847.0135(3) 3rd Solicitation of a child, via a computer
service, to commit an unlawful sex act.

316 847.0135(4) 2nd Traveling to meet a minor to commit an
unlawful sex act.

317 872.06 2nd Abuse of a dead human body.

318 874.05(2)(b) 1st Encouraging or recruiting person under
13 to join a criminal gang; second or
subsequent offense.

319 874.10 1st,PBL Knowingly initiates, organizes, plans,
finances, directs, manages, or
supervises criminal gang-related
activity.

320 893.13(1)(c)1. 1st Sell, manufacture, or deliver cocaine
(or other drug prohibited under s.

2-01451-12 20121846__

893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4.) within 1,000 feet
of a child care facility, school, or
state, county, or municipal park or
publicly owned recreational facility or
community center.

321 893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine
or other drug prohibited under s.
893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4., within 1,000 feet
of property used for religious services
or a specified business site.

322 893.13(4)(a) 1st Deliver to minor cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4. drugs).

323 893.135(1)(a)1. 1st Trafficking in cannabis, more than 25
lbs., less than 2,000 lbs.

324 893.135 1st Trafficking in cocaine, more than 28
(1)(b)1.a. grams, less than 200 grams.

325 893.135 1st Trafficking in illegal drugs, more than
(1)(c)1.a. 4 grams, less than 14 grams.

326 893.135(1)(d)1. 1st Trafficking in phencyclidine, more than
28 grams, less than 200 grams.

2-01451-12 20121846__

327 893.135(1)(e)1. 1st Trafficking in methaqualone, more than
200 grams, less than 5 kilograms.

328 893.135(1)(f)1. 1st Trafficking in amphetamine, more than
14 grams, less than 28 grams.

329 893.135 1st Trafficking in flunitrazepam, 4 grams
(1)(g)1.a. or more, less than 14 grams.

330 893.135 1st Trafficking in gamma-hydroxybutyric
(1)(h)1.a. acid (GHB), 1 kilogram or more, less
than 5 kilograms.

331 893.135 1st Trafficking in 1,4-Butanediol, 1
(1)(j)1.a. kilogram or more, less than 5
kilograms.

332 893.135 1st Trafficking in Phenethylamines, 10
(1)(k)2.a. grams or more, less than 200 grams.

333 893.1351(2) 2nd Possession of place for trafficking in
or manufacturing of controlled
substance.

334 896.101(5)(a) 3rd Money laundering, financial
transactions exceeding \$300 but less
than \$20,000.

335

2-01451-12 20121846__

896.104(4)(a)1. 3rd Structuring transactions to evade
reporting or registration requirements,
financial transactions exceeding \$300
but less than \$20,000.

336 943.0435(4)(c) 2nd Sexual offender vacating permanent
residence; failure to comply with
reporting requirements.

337 943.0435(8) 2nd Sexual offender; remains in state after
indicating intent to leave; failure to
comply with reporting requirements.

338 943.0435(9)(a) 3rd Sexual offender; failure to comply with
reporting requirements.

339 943.0435(13) 3rd Failure to report or providing false
information about a sexual offender;
harbor or conceal a sexual offender.

340 943.0435(14) 3rd Sexual offender; failure to report and
reregister; failure to respond to
address verification.

341 944.607(9) 3rd Sexual offender; failure to comply with
reporting requirements.

342 944.607(10)(a) 3rd Sexual offender; failure to submit to
the taking of a digitized photograph.

2-01451-12 20121846

944.607(12) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

944.607(13) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification.

985.4815(10) 3rd Sexual offender; failure to submit to the taking of a digitized photograph.

985.4815(12) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

985.4815(13) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification.

Section 6. Paragraph (b) of subsection (1) of section 921.0024, Florida Statutes, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(1)

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the

2-01451-12 20121846

court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation and each successive community sanction violation, unless any of the following apply:

1. If the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for the violation, and for each successive community sanction violation involving a new felony conviction.

2. If the community sanction violation is committed by a violent felony offender of special concern as defined in s. 948.06:

a. Twelve (12) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where:

(I) The violation does not include a new felony conviction; and

(II) The community sanction violation is not based solely on the probationer or offender's failure to pay costs or fines or make restitution payments.

b. Twenty-four (24) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where the violation includes a new felony conviction.

2-01451-12 20121846

Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of thirty (30) points shall be added. For purposes of this section, a prior serious felony is an offense in the offender's prior record that is ranked in level 8, level 9, or level 10 under s. 921.0022 or s. 921.0023 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender's date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more prior capital felonies in the offender's criminal record, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital felony offense for which the offender has entered a plea of nolo contendere or guilty or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

2-01451-12 20121846

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his or her possession: a firearm as defined in s. 790.001(6), an additional eighteen (18) sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his or her possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional twenty-five (25) sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), or (4), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement

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Protection Act under s. 775.0823(10) or (11), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Offense related to a criminal gang: If the offender is convicted of the primary offense and committed that offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03 ~~prohibited under s. 874.04~~, the subtotal sentence points are multiplied by 1.5.

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family or household member as defined in s. 741.28(3) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

Section 7. 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 Criminal Justice Committee

BILL: CS/SB 2052

INTRODUCER: Children, Families, and Elder Affairs Committee; Children, Families, and Elder Affairs Committee and Senator Lynn

SUBJECT: Sexually Violent Predators

DATE: February 2, 2012

REVISED: 02/08/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Farmer	Farmer	CF	Fav/CS
2.	Clodfelter	Cannon	CJ	Favorable
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" 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:

This bill amends Florida law related to the Involuntary Civil Commitment of Sexually Violent Predators ("Jimmy Ryce Act") by:

- Excluding sexually motivated misdemeanor acts from the definition of "sexually violent offense";
- Requiring the Department of Children and Families (department) to prioritize written assessments and recommendations of persons convicted of a sexually violent offense who will be released from total confinement within one year;
- Extending the deadline in which the department's multidisciplinary team is required to complete its assessment to the state attorney;
- Extending the deadline for the state attorney to file a petition to the circuit court alleging that a person is a sexually violent predator;
- Removing language related to the deportation of a sexually violent predator;
- Prohibiting the introduction, attempted introduction, or removal of certain items classified as contraband into any Jimmy Ryce facility;

- Subjecting an individual or vehicle entering the grounds of any Jimmy Ryce facility under these provisions to reasonable search and seizure of any contraband materials introduced into or upon the grounds of such facility for purposes of enforcement; and
- Creating a third-degree felony for the commission of such acts.

The bill also creates the Statewide Workgroup Force (workgroup) on the Conditional Release of Sexually Violent Predators. The purpose of the workgroup is to assess the appropriateness of placing sexually violent predators on conditional release and, based upon its assessment, make policy recommendations to the Governor and the Legislature. Duties of the workgroup include: collecting and organizing data concerning the practice of placing sexually violent predators on conditional release in Florida; identifying issues related to the use of conditional release in this state; and identifying procedures, if any, used by other states to release sexually violent predators into the community and the issue of supervising such persons while in the community.

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

This bill substantially amends the following sections of the Florida Statutes: 394.912, 394.913, 394.9135, and 394.917. The bill creates section 394.933, Florida Statutes and creates an unnumbered section of the Florida Statute.

II. Present Situation:

Sexually Violent Predators¹

A sexually violent predator is a person who has been convicted of a sexually violent offense and who also suffers from a mental abnormality or personality disorder that makes him or her likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.² The Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Jimmy Ryce Act (Act), was enacted in 1998 to address the treatment needs of these offenders.³ The Act creates a civil commitment process for sexually violent predators that is similar to Baker Act procedures for involuntary commitment and treatment of mentally ill persons.

Referring agencies identify offenders who have been convicted of specified sexually violent offenses and notify the department's Sexually Violent Predator Program and the state attorney who prosecuted the offender. The Department of Corrections (DOC) makes the majority of these referrals, with others coming from the Department of Juvenile Justice (DJJ) and the department itself.

After a referral is made, a clinical specialist reviews information provided by the referring agency and gathers any additional information that is needed to complete the case file. Two licensed psychologists employed by the department independently screen the case file to determine if the offender meets the statutory sexually violent predator criteria. If the department

¹ Much of the information in this section was derived from the Office of Program Policy Analysis & Government Accountability, Florida Legislature, *The Delays in Screening Sexually Violent Predators Increase Costs; Treatment Facility Security Enhanced*, Report No. 08-10, p.2. (Feb. 2008)

² Section 394.912, F.S.

³ Sections 394.910-394.932, F.S.

psychologists find that the offender meets the criteria, an independent, contracted evaluator also reviews the case file and provides a recommendation to the department.

A multidisciplinary team that includes at a minimum two persons who are either a licensed psychiatrist or a licensed psychologist reviews the evaluation reports. From this review, they render an opinion as to whether the offender meets the sexually violent predator criteria. The department must then provide a written assessment and written recommendation to the state attorney within 180 days of receiving notice from the referring agency. The recommendation must include the multidisciplinary team's report.⁴

The timeframes for this process are drastically accelerated when a person who has been convicted of a sexually violent offense is to be immediately released for some reason. A person who has been released ahead of scheduled release is transferred to the custody of the department by the referring agency. The multidisciplinary team has 72 hours after the transfer to provide its written assessment and recommendation to the state attorney. In turn, the state attorney has 48 hours to petition the court for a determination that the person is a sexually violent predator.⁵

After receiving the department's assessment and recommendation, the state attorney can initiate commitment proceedings by filing a probable cause petition seeking a determination that the offender meets statutory criteria to be a sexually violent predator.⁶ There is no prescribed time limit for filing other than in an immediate release situation. If the judge finds that the petition sets forth probable cause, a civil trial must be conducted within 30 days. A decision that an offender is a sexually violent predator must be made by the judge or a unanimous jury based upon clear and convincing evidence.⁷

An offender who is found to be a sexually violent predator is committed to the department's custody upon completion of his or her criminal sentence and transferred to the Florida Civil Commitment Center in Arcadia. If the commitment process is not completed prior to the end of an offender's prison sentence, the offender is detained by court order and transferred to the commitment center to await the outcome of commitment proceedings. On June 30, 2011, the commitment center housed 677 civilly committed predators and 147 detainees awaiting completion of commitment procedures.⁸

Sexually violent predators who are committed to the state under the Jimmy Ryce Act are detained at the commitment center until the court determines that they are no longer a threat to public safety. The department currently contracts with GEO Group, Inc., to operate the center and provide all treatment and security services. The treatment program consists of four levels of

⁴ Section 394.913(3), F.S.

⁵ Section 394.9135, F.S.

⁶ Section 394.914, F.S.

⁷ Sections 394.916 and 394.917, F.S.

⁸ Criminal Justice Estimating Conference, *Involuntary Civil Commitment of Sexually Violent Predators – History and Forecast*, (Dec. 14, 2011), available at <http://edr.state.fl.us/Content/conferences/criminaljustice/workpapers.pdf> (last visited Jan. 17, 2012)

cognitive behavior modification and takes a minimum of six years to complete, with progress assessed annually by program staff.⁹

Federal Deportation Detainers

Section 394.917(2), F.S., requires commitment of a sexually violent predator to the department's custody only after expiration of the incarcerative sentence and disposition of all detainers, except federal detainers for deportation. Therefore, the department is required to provide long-term care and treatment of persons who would otherwise be processed for deportation.¹⁰

Contraband

The Act does not currently criminalize the unauthorized introduction or removal of dangerous contraband from the Florida Civil Commitment Center. The facility has instituted its own operating procedures to prohibit such activities, but these policies do not have the same deterrent effect achieved by the possibility of criminal sanction. Section 394.458, F.S., provides criminal penalties for the introduction or removal of certain articles from the grounds of state mental health hospitals, s. 916.1085, F.S., does so for state forensic facilities, and s. 944.47, F.S., does so for state correctional facilities.

Conditional Release and Stipulated Agreements¹¹

In October 2011, a review was conducted, at the request of the Legislature, by the Office of Program Policy Analysis and Government Accountability (OPPAGA) regarding the practice of stipulated agreements for the conditional diversion or release of offenders from the Sexually Violent Predator Program.

Stipulated agreements are negotiated civil contracts between a state attorney and an offender that allow the offender to be released into the community under specified terms and conditions. State attorneys' offices use these agreements in an effort to maintain public safety by providing some measure of accountability when an offender meets sexually violent predator criteria but it is unlikely that the state will prevail at the commitment trial or annual hearing.

As of September 2011, OPPAGA identified 153 stipulated agreements approved by Florida state courts. State attorneys' offices that use these agreements cite their broad prosecutorial discretion and authority to negotiate civil contracts as the legal basis for these agreements.

Sometimes state attorneys' offices use the agreements to require conditions for release from the Sexually Violent Predator Program because there is no re-entry phase to provide community-based treatment and supervision. Preempting trials also reduces court costs. However, some stakeholders question the legal basis and enforceability of the agreements. State attorneys'

⁹ Office of Program Policy Analysis & Government Accountability, Florida Legislature, *The Delays in Screening Sexually Violent Predators Increase Costs; Treatment Facility Security Enhanced*, Report No. 08-10, p.2.(Feb. 2008), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0810rpt.pdf> (last visited Jan. 18, 2012)

¹⁰ See Department of Children and Families, *Staff Analysis and Economic Impact for Senate Bill 2052* (January 23, 2012), p. 3 (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹¹ Information contained in this portion of this bill analysis is replicated from the Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Conditional Release of Sexually Violent Predators Through Stipulated Agreements*, Research Memorandum (Oct. 21, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs)

offices are typically responsible for providing supervision to sexually violent predators released into the community under stipulated agreements; however, they do not have the ability to enforce many of the provisions of the agreements.

Almost half of sexually violent predators also had some type of Department of Corrections supervision at the time of their release. Of the 140 offenders released via stipulated agreement and in the community for at least one year, 31 have been convicted of new criminal charges, including 5 that were convicted of a felony sex offense and 3 others that were convicted of violent felonies. The remaining 23 were convicted of various misdemeanors and non-violent felonies.¹²

In addition, 18 offenders had been returned to the Florida Civil Commitment Center due to contract revocation. In 7 of these cases this was due to a new criminal conviction; in the other 11 cases it was due to a new criminal charge or a material violation of the stipulated agreement, such as non-compliance with the treatment plan or having unsupervised visitation with a minor.¹³

III. Effect of Proposed Changes:

The bill revises the Jimmy Ryce Act as described below.

Definition of Sexually Violent Offense

The bill amends s. 394.912, F.S., to exclude sexually motivated misdemeanor acts from the definition of “sexually violent offense.”

Prioritization of Assessment of Persons Convicted of a Sexually Violent Offense

The proposed bill amends s. 394.913, F.S., to require the Department of Children and Family Services (department) to prioritize the assessment of persons convicted of a sexually violent offense for a recommendation as to whether the person meets the definition of a sexually violent predator based on when such persons will be released. Specifically, of the persons convicted of a sexually violent offense and who have less than 365 days until their anticipated release, the department must give priority to the completion of the assessment and recommendation for the person having the earliest release date.

Extension of Deadlines

The bill amends s. 394.9135, F.S., to extend the deadlines for the department to provide its written assessment and recommendation to the state attorney and for the state attorney to file a commitment petition. The bill provides that if the 72-hour deadline for providing the recommendation to the state attorney falls after 5 p.m. on a work day or during a weekend or holiday, the recommendation may be provided by 5 p.m. the next work day. Similarly, if the state attorney’s 48-hour petition filing deadline falls after 5 p.m. or on a weekend or holiday, the commitment petition may be filed by 5 p.m. the next work day.

Use of the term “work day” could create some confusion in the application of the timeframes. Although it appears that the intent is to suggest after 5 p.m. on a weekday, some individuals

¹² *Id.*

¹³ *Id.*

“work” on Saturday or Sunday. The Legislature may wish to use another term such as “weekday.”¹⁴

Detainers for Deportation

The bill amends s. 394.917, F.S., to delete a requirement that a sexually violent predator be committed to the department for treatment before the person may be deported. This will allow federal authorities to process the sexually violent predator for deportation, as opposed to the current requirement that the deportable predator be committed to the Jimmy Ryce facility.

In discussing the merits of this proposal, the department notes that facilitating deportation of committed sexually violent predators would save the state the expense of providing long-term care and treatment to these persons. The criminal offense for which a sexually violent predator was convicted will almost certainly fall into the category of an “aggravated felony” under 8 U.S.C. s. 1101(a)(43). United States Immigration and Customs Enforcement (ICE) policy places aliens who have committed an aggravated felony in the first priority level for removal from the United States.¹⁵ Therefore, it is not likely that a sexually violent predator who is transferred to ICE would be released from federal custody while awaiting deportation.¹⁶

Contraband

The bill creates s. 394.933, F.S., to prohibit the introduction or removal of certain articles to or from a Jimmy Ryce facility; and to impose penalties for the commission of such acts.

Specifically, the bill provides that, unless authorized by law or as specifically authorized by the person in charge of a Jimmy Ryce facility, a person is prohibited from introducing into, or take or attempt to take or send any of the following articles, which are declared to be contraband:

- An intoxicating beverage or beverage that causes or may cause an intoxicating effect;
- A controlled substance as defined by chapter 893, F.S.;¹⁷
- A firearm or deadly weapon; or
- Any other item designated by written facility policy to be hazardous to the welfare of clients or staff or to the operation of the facility.

These provisions are substantially the same as those in s. 916.1085, F.S., which applies to secure forensic facilities for the treatment of incompetent defendants or persons acquitted of crimes by reason of insanity. However, with regard to prohibited articles, neither s. 394.458, F.S. (relating to state hospitals) nor s. 944.47, F.S. (relating to state correctional facilities) includes a provision criminalizing the introduction of additional items as designated by written facility policy. The implications of this are discussed in the Constitutional Issues section of this analysis.

¹⁴ CS/SB 1314 (2010 Regular Session).

¹⁵ Immigration and Customs Enforcement Policy No. 10072.1, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, March 2, 2011.

¹⁶ The department has previously noted that prosecutors handling sexually violent predator civil commitments have sometimes been reluctant to consider allowing deportation rather than civil commitment because of the potential for the individual to unlawfully return to the United States. In addition, some prosecutors have expressed reluctance to facilitate what may amount to the unsupervised release of a sexually violent predator in his country of origin. See Department of Children and Families, *Staff Analysis and Economic Impact for HB 1097* (January 4, 2012), p.2 (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁷ Chapter 893, F.S., includes numerous controlled substances that are listed in Schedules I, II, III, IV, and V.

This section also prohibits a person from transmitting to, attempting to transmit to, or attempting to cause to be transmitted to or received by any client of any facility under the supervision or control of the department or agency, any item declared to be contraband at any place that is outside the grounds of the facility. An exception is made if the action is authorized by law or specifically authorized by the person in charge of the facility.

In addition, the bill subjects an individual or vehicle entering the grounds of any Jimmy Ryce facility to reasonable search and seizure of any contraband materials introduced into or upon the grounds of a facility. Under the bill, reasonable search and seizure may be enforced by institutional security personnel or by a law enforcement officer.

A person who introduces or attempts to introduce contraband into a facility or transmits or attempts to transmit contraband to a client of a facility is subject to punishment of a third-degree felony.¹⁸

Statewide Workgroup on the Conditional Release of Sexually Violent Predators

The bill creates the Statewide Workgroup on the Conditional Release of Sexually Violent Predators for the purpose of assessing the appropriateness of placing sexually violent predators on conditional release. Based upon the workgroup assessment, it will make policy recommendations to the Governor and the Legislature. The workgroup will be required to:

- Collect and organize data concerning the practice of placing sexually violent predators on conditional release in this state;
- Identify issues related to the use of conditional release in this state;
- Identify the procedures, if any, used by other states to release sexually violent predators into the community and the attendant issue of supervising sexually violent predators while in the community;
- Ascertain the costs of monitoring sexually violent predators in the community;
- Prepare policy recommendations for presentation to the Governor and the Legislature regarding the conditional release of sexually violent predators; and
- Complete its work by December 1, 2012 and submit its report and recommendations by February 1, 2013 to the Governor and the Legislature.

The workgroup will be comprised of the following members:

- A representative from the Department of Children and Families who shall be appointed by the Secretary of the department;
- A representative from the Department of Corrections who shall be appointed by the secretary of the department;
- A representative from the Florida Prosecuting Attorneys Association;
- A representative from the Florida Public Defender Association;
- A representative from the Florida Association for the Treatment of Sexual Abusers; and

¹⁸ A felony of the third-degree is punishable by a fine not to exceed \$5,000 or a term of imprisonment not exceeding 5 years. If the offender is determined to be an habitual offender, the term of imprisonment is not to exceed 10 years.

- A representative from the Florida Parole Commission.

Under the bill, members of the workgroup will serve without compensation but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S., for their actual and necessary expenses incurred in the performance of their duties. The Department of Children and Families will provide the workgroup with staff support necessary to assist the workgroup in the performance of its duties.

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.

D. Other Constitutional Issues:

Section 5 of the bill creates s. 394.933, F.S., to prohibit introduction of contraband into a civil commitment facility. The prohibited articles include three specified items (intoxicating substances, controlled substances, and firearms or deadly weapons) as well as “(a)ny other item designated by written facility policy to be hazardous to the welfare of clients or staff or to the operation of the facility.” The last provision raises concerns regarding unlawful delegation of legislative powers, and there is also a question of whether the statute provides for adequate notice of what activity is a criminal offense. The similar provision in s. 916.1085, F.S., which allows contraband items to be designated by written institutional policy has been in effect since the statute was created in 1985. However, there have been no reported cases challenging the constitutionality of the provision.

Article I, Section 3 of the Florida Constitution provides for separation of powers between the legislative, executive, and judicial branches. In *Clark v. State*, 395 So.2d 525 (Fla. 1981), the Florida Supreme Court recognized that the Legislature may at times delegate legislative power to the executive branch if the delegation is lawful and reasonable. The reasonableness of the delegation must be determined within the practical context of the problem addressed by the delegation.¹⁹ In *Clark*, the Legislature considered s. 944.47, F.S., which is the contraband statute relating to correctional institutions. The statute provided that introduction of specific items listed in the statute was a criminal

¹⁹ *Clark v. State*, 395 So. 2d 525 (Fla. 1981).

offense unless the officer in charge of the institution had authorized introduction of the item through regular channels. The court found that the discretion given to the officer in charge was not an unlawful delegation of legislative authority. However, it may be significant that the discretion examined in *Clark* allowed decriminalization of activity, not criminalization of activities not specifically included in statute.

With regard to criminalization of activity by written policy, in *B.H. v. State* the Florida Supreme Court held that the Legislature unconstitutionally delegated the power to define the elements of a crime when it created a third degree felony offense of escape from a residential commitment facility in restrictiveness level VI or above, and gave the former Department of Health and Rehabilitative Services complete discretion to define restrictiveness levels.²⁰ However, in *Avatar Development Corporation v. State*, the Court found that it was permissible for the violation of rules and permit conditions established by the Department of Environmental Protection for pollution control to be punishable as misdemeanors.²¹ It is unclear whether a court would deem the discretion given to the facility in the bill to be more like the statute in *B.H.* or the one in *Avatar Development Corporation*.

The statute may also be vulnerable to challenge on the grounds that it violates due process because it does not require prior notice of what activity is criminal. In *Avatar Development Corporation*, the Court gave some significance to the fact that the defendant had notice of the prohibited or required activity because it was set out on the permit that was issued. This potential infirmity could be cured by requiring some form of publication of the items that are prohibited by policy.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference determined that the bill would have an insignificant impact on the state prison population.

VI. Technical Deficiencies:

As noted in the discussion of the amendment to s. 394.9135, F.S., regarding extension of time limits, it may be appropriate to consider using the term “week day” or another term rather than the term “work day.”

²⁰ *B.H. v. State*, 645 So.2d 987 (Fla. 1994), *certiorari denied*, 515 U.S. 1132 (1995).

²¹ *Avatar Development Corporation v. State*, 723 So.2d 199 (Fla. 1998).

VII. Related Issues:

According to the department, the proposed changes in this bill will protect vulnerable citizens by helping to lower the chance that extremely dangerous sexual predators will “slip through the cracks” and avoid commitment because of technical violations of the statute as currently written. The revisions in this bill will also help prevent the introduction of dangerous contraband onto the grounds of any facility designated by the department to house and treat persons detained or committed. The prohibition of dangerous contraband and possible prosecution of persons violating these provisions will help safeguard staff members, visitors, and residents of such facilities.²²

The following comments were among those provided by the department in its analysis of the bill:

- Limiting sexually violent offenses to felony criminal acts will make statutory definitions consistent with legislative intent by improving efficiency in identifying only those offenders who are extremely dangerous sexual predators.
- Allowing the department to prioritize assessments by release date for persons within one year of release ensures adequate time for processing referrals and filing commitment petitions.
- Extending deadlines to the next working day when statutory time limits related to immediate release referrals end past business hours on a work day or on weekends or holidays would ensure there is sufficient time for making recommendations and filing commitment petitions. This prevents sexual predators from being released for technical reasons unrelated to public safety.

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 the Children, Families, and Elder Affairs Committee on January 25, 2012:

The committee substitute:

- Changes the “task force” to “workgroup”;
- Changes the date of the workgroup’s organizational session from September 1, 2012 to August 1, 2012;
- Changes the completion deadline for the report from September 1, 2012 to December 1, 2012;
- Changes the due date of the required report to the Governor and the Legislature from January 1, 2014 to February 1, 2013; and
- Adds the Florida Parole Commission to the membership of the workgroup.

²² Department of Children and Families, *2012 Agency Proposal* (received via email on August 24, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

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 Committees on Children, Families, and Elder Affairs; and
Children, Families, and Elder Affairs

586-02386-12

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1 A bill to be entitled
2 An act relating to sexually violent predators;
3 amending s. 394.912, F.S.; clarifying the definition
4 of the term "sexually violent offense" to include only
5 a felony criminal act that has been determined beyond
6 a reasonable doubt to have been sexually motivated;
7 amending s. 394.913, F.S.; requiring that the
8 Department of Children and Family Services give
9 priority to the assessment of persons who will be
10 released from total confinement at the earliest date
11 under certain circumstances; amending s. 394.9135,
12 F.S.; revising the period within which the
13 department's multidisciplinary team is required to
14 provide an assessment to the state attorney; revising
15 the period within which the state attorney may file a
16 petition with the circuit court alleging that an
17 offender is a sexually violent predator; amending s.
18 394.917, F.S.; deleting a provision relating to the
19 deportation of a sexually violent predator; creating
20 s. 394.933, F.S.; prohibiting the introduction or
21 attempted introduction of certain items into any
22 facility for the detention of sexually violent
23 predators; prohibiting the transmission or attempted
24 transmission of prohibited items to a person
25 incarcerated in the facility; providing that a person
26 or vehicle entering the grounds of the facility is
27 subject to reasonable search for and seizure of
28 prohibited items; subjecting a person to criminal
29 penalties for introducing or attempting to introduce a

586-02386-12

20122052c1

30 prohibited item on the grounds of a facility for the
31 detention of sexually violent predators; creating the
32 Statewide Workgroup on the Conditional Release of
33 Sexually Violent Predators; providing that the
34 workgroup is created for the purposes of assessing the
35 appropriateness of placing sexually violent predators
36 on conditional release in the community and, based
37 upon its assessment, making policy recommendations to
38 the Governor and the Legislature; providing for
39 membership on the workgroup; providing for the payment
40 of per diem and travel expenses; requiring the
41 Department of Children and Family Services to provide
42 support to the workgroup; requiring the workgroup to
43 hold its organizational meeting by a specified date;
44 describing the duties and responsibilities of the
45 workgroup; requiring the workgroup to submit its
46 report to the Governor, the President of the Senate,
47 and the Speaker of the House of Representatives by a
48 specified date; providing an effective date.

49
50 Be It Enacted by the Legislature of the State of Florida:

51
52 Section 1. Subsection (9) of section 394.912, Florida
53 Statutes, is amended to read:

54 394.912 Definitions.—As used in this part, the term:

55 (9) "Sexually violent offense" means:

56 (a) Murder of a human being while engaged in sexual battery
57 in violation of s. 782.04(1)(a)2.;

58 (b) Kidnapping of a child under the age of 13 and, in the

586-02386-12

20122052c1

course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(c) Committing the offense of false imprisonment upon a child under the age of 13 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(d) Sexual battery in violation of s. 794.011;

(e) Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of s. 800.04 or s. 847.0135(5);

(f) An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, of a sexually violent offense;

(g) Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense under paragraphs (a)-(f) or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or

(h) Any felony criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated.

Section 2. Paragraph (e) of subsection (3) of section 394.913, Florida Statutes, is amended to read:

394.913 Notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing

586-02386-12

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multidisciplinary teams; information to be provided to multidisciplinary teams.—

(3)

(e) 1. Within 180 days after receiving notice, there shall be a written assessment as to whether the person meets the definition of a sexually violent predator and a written recommendation, which shall be provided to the state attorney. The written recommendation shall be provided by the Department of Children and Family Services and shall include the written report of the multidisciplinary team.

2. Notwithstanding the timeframes in this section, if the written assessment and recommendation have not been completed for more than one person who will be released from total confinement in less than 365 days, the department shall give priority to the assessment of the person who will be released at the earliest date.

Section 3. Subsections (2) and (3) of section 394.9135, Florida Statutes, are amended to read:

394.9135 Immediate releases from total confinement; transfer of person to department; time limitations on assessment, notification, and filing petition to hold in custody; filing petition after release.—

(2) Within 72 hours after transfer, the multidisciplinary team shall assess whether the person meets the definition of a sexually violent predator. If the multidisciplinary team determines that the person does not meet the definition of a sexually violent predator, that person shall be immediately released. If the multidisciplinary team determines that the person meets the definition of a sexually violent predator, the

586-02386-12 20122052c1

team shall provide the state attorney, as designated by s. 394.913, with its written assessment and recommendation within the 72-hour period or, if the 72-hour period ends after 5 p.m. on a work day or on a weekend or holiday, within the next working day thereafter.

(3) ~~Within 48 hours after receipt of the written assessment and recommendation from the multidisciplinary team,~~ The state attorney, as designated in s. 394.913, may file a petition with the circuit court alleging that the person is a sexually violent predator and stating facts sufficient to support such allegation within 48 hours after receipt of the written assessment and recommendation from the multidisciplinary team or by 5 p.m. of the next work day if the 48-hour period ends after 5 p.m. on a work day or on a weekend or holiday. If a petition is not timely filed ~~within 48 hours~~ after receipt of the written assessment and recommendation by the state attorney, the person shall be immediately released. If a petition is filed pursuant to this section and the judge determines that there is probable cause to believe that the person is a sexually violent predator, the judge shall order the person be maintained in custody and held in an appropriate secure facility for further proceedings in accordance with this part.

Section 4. Subsection (2) of section 394.917, Florida Statutes, is amended to read:

394.917 Determination; commitment procedure; mistrials; housing; counsel and costs in indigent appellate cases.—

(2) If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences and disposition

586-02386-12 20122052c1

~~of any detainees other than detainees for deportation by the United States Bureau of Citizenship and Immigration Services,~~ the person shall be committed to the custody of the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large. At all times, persons who are detained or committed under this part shall be kept in a secure facility segregated from patients of the department who are not detained or committed under this part.

Section 5. Section 394.933, Florida Statutes, is created to read:

394.933 Introduction or removal of certain articles unlawful; penalty.—

(1) (a) Except as authorized by law or as specifically authorized by the person in charge of a facility, a person may not introduce into any facility for commitment or detention of sexually violent predators under this part, or take or attempt to take or send therefrom, any of the following articles, which are declared to be contraband for the purposes of this section:

1. An intoxicating beverage or a beverage that causes or may cause an intoxicating effect;

2. A controlled substance as defined in chapter 893;

3. A firearm or deadly weapon; or

4. Any other item designated by written facility policy to be hazardous to the welfare of clients or staff or to the operation of the facility.

(b) A person may not transmit to, attempt to transmit to, or cause or attempt to cause to be transmitted to or received by

586-02386-12 20122052c1

any client of any facility under the supervision or control of the department or agency any article or thing declared by this section to be contraband, at any place that is outside the grounds of such facility, except as authorized by law or as specifically authorized by the person in charge of the facility.

(2)(a) An individual or vehicle entering the grounds of any facility to which this section applies is subject to reasonable search and seizure of any contraband materials introduced into or upon the grounds of such facility for the purpose of enforcing this section. This paragraph shall be enforced by institutional security personnel or by a law enforcement officer as defined in s. 943.10.

(b) A person who violates subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Statewide Workgroup on the Conditional Release of Sexually Violent Predators.—

(1) The Statewide Workgroup on the Conditional Release of Sexually Violent Predators is created.

(2) The workgroup is created for the purposes of assessing the appropriateness of placing sexually violent predators on conditional release and, based upon its assessment, making policy recommendations to the Governor and the Legislature.

(a) The workgroup shall consist of five members, including:

1. A representative of the Department of Children and Family Services who shall be appointed by the secretary of the department.

2. A representative of the Department of Corrections who shall be appointed by the secretary of the department.

586-02386-12 20122052c1

3. A representative from the Florida Prosecuting Attorneys Association.

4. A representative from the Florida Public Defender Association.

5. A representative from the Florida Association for the Treatment of Sexual Abusers.

6. A representative from the Florida Parole Commission.

(b) The workgroup shall elect a chair from among its members.

(c) Members of the workgroup shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061, Florida Statutes, for their actual and necessary expenses incurred in the performance of their duties.

(d) The Department of Children and Family Services shall provide the workgroup with staff support necessary to assist the workgroup in the performance of its duties.

(3) The workgroup shall hold its organizational session by August 1, 2012. Thereafter, the workgroup shall meet at least four times. Additional meetings may be held at the request of the chair. A majority of the members of the workgroup constitutes a quorum.

(4) The workgroup shall:

(a) Collect and organize data concerning the practice of placing sexually violent predators on conditional release in this state;

(b) Identify issues related to the use of conditional release in this state;

(c) Identify the procedures, if any, used by other states

586-02386-12 20122052c1

233 to release sexually violent predators into the community and the
234 attendant issue of supervising sexually violent predators while
235 in the community;

236 (d) Ascertain the costs of monitoring sexually violent
237 predators in the community; and

238 (e) Prepare policy recommendations for presentation to the
239 Governor and the Legislature regarding the conditional release
240 of sexually violent predators.

241 (5) The workgroup shall complete its work by December 1,
242 2012, and submit its report and recommendations to the Governor,
243 the President of the Senate, and the Speaker of the House of
244 Representatives by February 1, 2013.

245 Section 7. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

info only

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

Feb 9, 2012

Meeting Date

Topic Sexually Violent Offenders

Bill Number SB 2052
(if applicable)

Name Jane Tillman

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address 4070 Esplanade Way

Phone 921-2816

Street

Tallahassee FL 32399

City

State

Zip

E-mail JaneTillman@fpc.state.fl.us

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Parole Commission

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

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

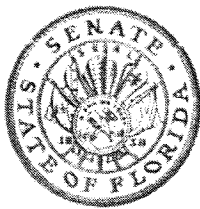
WITNESS'S NAME: Neal Dupree

ANSWER: yes

Pursuant to §90.605(1), Florida Statutes: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Criminal Justice

DATE: 2/9/12



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, Chair
Banking and Insurance
Budget
Budget - Subcommittee on Criminal and Civil Justice
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Criminal Justice
Military Affairs, Space, and Domestic Security

SENATOR MICHAEL S. "MIKE" BENNETT

President Pro Tempore
21st District

February 9, 2012

The Honorable Greg Evers, Chair
Committee on Criminal Justice
510 Knott Building
Tallahassee, Florida 32399-1100

Dear Senator Evers,

This is to request that I be excused from today's committee meeting. I had bills up in three other committees and did not finish them in time to make it to the Criminal Justice Committee.

I appreciate your consideration of this request.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mike Bennett".

Michael S. "Mike" Bennett

MSB/jc

Cc: Sue Arnold

REPLY TO:

- ☐ Wildewood Professional Park, Suite 90, 3653 Cortez Road West, Bradenton, Florida 34210 (941) 727-6349
- ☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5078

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

CourtSmart Tag Report

Room: LL 37

Case: .

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 2/9/2012 1:32:38 PM

Ends: 2/9/2012 3:14:44 PM **Length:** 01:42:07

1:32:40 PM	Tab 1 - SB 212 (Senator Oelrich)
1:40:49 PM	Nancy Daniels, Public Defender, Florida Public Defender Association
1:47:20 PM	Ms. Haley Van Erem - Public Interest Law Center (law student)
1:49:29 PM	Roll Call
1:49:55 PM	Tab 3 - SB 834 (Senator Wise)
1:56:59 PM	Vicki Lukis, Senate Juvenile Justice Education Workgroup
2:04:50 PM	Roll Call
2:05:09 PM	Tab 5 - SB 1172 (Senator Detert)
2:12:39 PM	Sam Bell, Florida Pediatric Society
2:13:06 PM	Randell Alexander, M.D., Professor of Pediatrics
2:17:23 PM	Roll Call
2:17:46 PM	Tab 7 - SB 1290 (Senator Negron)
2:19:48 PM	Roll Call
2:20:27 PM	Tab 6 - SB 1272 (Presented by Jennifer Wilson for Senator Latvala)
2:24:45 PM	Roll Call
2:25:12 PM	Tab 8 - SB 1580 (Presented by Jennifer Wilson for Senator Latvala)
2:33:39 PM	Wayne Finley, Legislative Advocacy, City of St. Petersburg
2:44:12 PM	Roll Call
2:44:51 PM	Tab 10 - SB 2052 (Hannah Hodge from Senator Storms Office)
2:47:29 PM	Roll Call
2:48:43 PM	Tabs 11, 12, 13, 15 Confirmations
2:49:43 PM	Roll Call
2:50:04 PM	Tab 14 - Confirmation of Neal A. Dupree, Southern Region, Capital Collateral Regional Counsel
2:50:49 PM	Roll Call
2:51:29 PM	Tab 2 - SB 762 (Senator Hays)
2:57:24 PM	Anthony DiMarco (Florida Bankers Assoc) spoke to amendment
2:58:52 PM	Roll Call
2:59:26 PM	Senator Dean takes the Chair
2:59:48 PM	Tab 9 - SB 1846 (Senator Evers)
3:01:07 PM	Roll Call
3:01:14 PM	Senator Evers takes the Chair
3:01:48 PM	Tab 4 - SB864 (Presented by Rick Kendust for Senator Altman)
3:10:33 PM	Jerry Stenton, Lifesafer Ignition Interlock
3:13:10 PM	Kristen Allen , MADD Florida
3:14:32 PM	Meeting adjourned