The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY Senator Lee, Chair Senator Soto, Vice Chair

	MEETING DATE: TIME: PLACE:	8:00 —9:30 a.m.			
	MEMBERS:	Senator Le Ring, and T		enator Soto, Vice Chair; Senators Bradley, Gardir	ner, Joyner, Latvala, Richter,
TAB	BILL NO. and INTR	ODUCER		BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 448 Evers (Compare CS/CS/H 89	9, S 438)	to the us threaten to the us deadly f circums relate to force; pr threaten	ned Use of Force; Applying provisions relating se of force in defense of persons to the ned use of force; applying presumption relating se of deadly force to the threatened use of orce in the defense of a residence and similar tances; applying immunity provisions that the use of force to the threatened use of roviding that a person is not justified in the ned use of force to resist an arrest by a law ment officer, etc. 01/08/2014 Favorable 02/11/2014 03/04/2014	
2	SB 592 Criminal Justice		Correcti	I Justice; Requiring the Department of ons to verify the authenticity of certain court before releasing a person from incarceration, 02/11/2014 Not Considered 03/04/2014	
3	CS/SB 182 Children, Families, and Affairs / Stargel (Compare CS/H 73, H CS/CS/CS/S 526)		pornogra child por prohibiti probatio accessir	prnography; Defining the terms "child aphy" and "minor"; including possession of rnography within specified criminal offenses; ng certain conditional releasees, ners, or community controllees from viewing, ng, owning, or possessing any obscene, aphic, or sexually stimulating material, etc.	

12/09/2013 Favorable 02/11/2014 Fav/CS

03/04/2014

CJ

CF JU

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 4, 2014, 8:00 — 9:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 188 Education / Hukill (Identical CS/H 195, Compare S 232)	Education Data Privacy; Providing for annual notice to K-12 students and parents of rights relating to education records; providing limitations on the collection of information and the disclosure of confidential and exempt student records; revising provisions relating to the submission of student social security numbers and the assignment of student identification numbers; requiring the Department of Education to establish a process for assigning student identification numbers, etc. ED 02/04/2014 Fav/CS CJ 02/17/2014 Favorable JU 03/04/2014	
5	CS/SB 532 Criminal Justice / Simmons (Similar H 475)	Disclosure of Sexually Explicit Images; Prohibiting an individual from disclosing a sexually explicit image of an identifiable person with the intent to harass such person if the individual knows or should have known such person did not consent to the disclosure; requiring a court to order that a person convicted of such offense be prohibited from having contact with the victim; providing criminal penalties for a violation of such order; providing that criminal penalties for certain offenses run consecutively with a sentence imposed for a violation of specified provisions, etc. CJ 02/17/2014 Fav/CS JU 03/04/2014	
6	CS/SB 634 Children, Families, and Elder Affairs / Brandes (Similar CS/H 635)	Guardianship; Revising the requirements and authorizations of the court to require specified guardians to submit to a credit history investigation and background screening; authorizing a clerk of the court to obtain and review records impacting guardianship assets and to issue subpoenas to nonparties upon application to the court; providing for the removal of a guardian for a bad faith failure to submit records during an audit, etc. CF 02/11/2014 Fav/CS JU 03/04/2014 AP	
7	SB 260 Latvala (Identical H 203)	Unaccompanied Youth; Authorizing certain unaccompanied youths to consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment for themselves and for their children in certain circumstances; providing that such consent does not affect the requirements of the Parental Notice of Abortion Act, etc. CF 02/04/2014 Favorable HP 02/18/2014 Favorable JU 03/04/2014	

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 4, 2014, 8:00 — 9:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 700 Bradley (Similar H 7055)	Department of Juvenile Justice; Allowing a child who has been detained to be transferred to the detention center or facility in the circuit in which the child resides or will reside at the time of detention; requiring the court to hold a hearing if a child is charged with direct contempt of court and to afford the child due process at such hearing; providing goals for the department's prevention services; prohibiting an employee from willfully and maliciously neglecting a juvenile offender, etc. CJ 02/17/2014 Favorable JU 03/04/2014 ACJ AP	

Other Related Meeting Documents

The Florida Senate BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

	Prep	pared By: T	he Professiona	I Staff of the Commi	ttee on Judiciary	
BILL:	SB 448					
INTRODUCER:	Senator Ev	ers				
SUBJECT:	Threatened	Use of F	orce			
DATE:	February 2	1, 2014	REVISED:	03/03/14		
ANAL	YST	STAF	F DIRECTOR	REFERENCE		ACTION
1. Cellon		Canno	n	CJ	Favorable	
2. Brown		Cibula		JU	Pre-meeting	
3.				RC		

I. Summary:

SB 448 amends Florida's self-defense laws in ch. 776, F.S. The self-defense laws regulate a person's right to use force in self-defense and provide that a person is immune from civil actions and criminal prosecutions for the lawful use of force. The self-defense laws in ch. 776, F.S., do not expressly regulate the use of threats of force in self-defense. This bill expressly authorizes a person to threaten the use of force in situations where the person may lawfully use actual force in self-defense. Additionally, the bill extends the immunity protections in existing law for the lawful use of force to a person who lawfully uses threats of force in self-defense.

In recent years, defendants have been convicted of aggravated assault for threatening to use force (e.g., displaying a firearm, firing a "warning shot," etc.) and sentenced to mandatory minimum terms of imprisonment pursuant to the 10-20-Life law. In some cases, the defendant unsuccessfully argued self-defense.

II. Present Situation:

Aggravated Assault

Assault, a second degree misdemeanor¹ is defined as an intentional, unlawful threat by word or act to do violence to another person, coupled with an apparent ability to do so, followed by an act which creates a well-founded fear in the other person that violence is imminent.²

Aggravated assault, a third degree felony,³ is an assault:

¹ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

² Section 784.011(1), F.S.

³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082(3)(d) and 775.083(1)(c), F.S.

- With a deadly weapon without intent to kill; or
- With an intent to commit a felony.⁴

The 10-20-Life Law

Section 775.087, F.S., often referred to as the "10-20-Life" law, requires a judge to sentence a person convicted of specified offenses to a minimum term of imprisonment if, while committing the offense, the person possessed or discharged a firearm or destructive device.⁵ Under the 10-20-Life law, a person convicted of aggravated assault must be sentenced to:

- A minimum term of imprisonment of 3 years if the person possessed a firearm or destructive device during commission of the offense;
- A minimum term of imprisonment of 20 years if the person discharged a firearm or destructive device during commission of the offense; or
- A minimum term of imprisonment of between 25 years and life in prison if, during commission of the offense, the person discharged a firearm or destructive device which resulted in death or great bodily harm.⁶

Self-defense

The "Castle" Concept

Section 776.013, F.S., absolves a person of a duty to retreat before using deadly force if the person knows or reasonably believes that an unlawful and forcible entry of a dwelling, residence, or occupied vehicle was occurring or had occurred.⁷ This provision appears to codify and expand what constitutes a "castle" under the common law. Under the common law "Castle Doctrine," a "castle" was limited to a person's home.

Section 776.013(4), F.S., creates a presumption that a person intends to commit an unlawful act using force or violence when that person unlawfully and forcibly enters another person's dwelling, residence, or occupied vehicle. Similarly, s. 776.013(1), F.S., creates a presumption that the person using deadly, defensive force has a reasonable fear of imminent peril of death or great bodily harm.

The presumption that a person intends to commit an unlawful act does not apply if the person against whom force is used:

⁴ Section 784.021, F.S.

⁵ The terms "firearm" and "destructive device" are defined in accordance with s. 790.001, F.S.

⁶ Section 775.087(2)(a)1., 2., and 3., F.S.

⁷ A dwelling is defined as: "a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night." Section 776.013(5)(a), F.S. A residence is defined as "a dwelling in which a person resides, even temporarily, or visits as an invited guest." Section 776.013(5)(b), F.S. A vehicle is defined as "a motorized or non-motorized conveyance intended to transport people or property." Section 776.013(5)(c), F.S. In addition to extending the concept of a home to other places of shelter, s. 776.013(3), F.S., extends the right to "stand your ground" beyond a place of habitation altogether provided that a person is attacked while he or she is in a place where he or she has a right to be and is not engaged in unlawful activity.

- Has the right to enter the place, including as an owner or lessee, and if he or she is not subject to a court-ordered injunction or "no contact" order.
- Has custody of and is in the process of legally removing a child or grandchild.
- Is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle for that purpose.
- Is a law enforcement officer acting pursuant to his or her official duties.

Self-defense and Defense of Others (Outside the "Castle")

Section 776.012, F.S., relieves a person of a duty to retreat before using non-deadly force when the person reasonably believes that the force is needed for defense against a person's imminent use of unlawful force. Deadly force is permitted when the person defends himself or herself or another person under a reasonable belief that deadly force is needed to prevent imminent great bodily harm or death or to prevent the perpetrator from committing a forcible felony.⁸

Self-defense and Defense of Property

Section 776.031, F.S., authorizes a person to use non-deadly force to protect personal property and real property other than a dwelling. Additionally, the provision absolves a person of a duty to retreat and justifies the use of deadly force if the person reasonably believes deadly force is necessary to prevent the commission of a forcible felony.⁹

Limitations on Self-defense Claims by Aggressors

A person who is in the process of committing or escaping after committing a forcible felony is precluded from claiming a justifiable use of force.¹⁰

The defense is also not available to a person who otherwise qualifies but initially provokes the use of force against himself or herself, unless:

The force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and has exhausted every reasonable means other than the use of force which is likely to result in death or great bodily harm; or

• The person physically withdraws in good faith and clearly indicates the desire to withdraw, but the assailant continues or resumes the use of force.¹¹

Immunities and Defenses to Legal Actions

A person who uses force as authorized under the Stand Your Ground law is immune from criminal prosecution and any civil action based on the use of force. Immunity from criminal prosecution includes immunity from being arrested, detained in custody, and charged or prosecuted.¹² A defendant to a civil action based on a use of force is entitled to reasonable

⁸ Section 776.012, F.S.

⁹ A forcible felony is defined to include the following offenses: "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." Section 776.08, F.S.

¹⁰ Section 776.041(1), F.S.

¹¹ Section 776.041(2)(a) and (b), F.S.

¹² Section 776.032(1), F.S.

attorney's fees, court costs, lost income and all expenses related to the defense of the action if the defendant is immune from criminal prosecution for the use of force.¹³

Case Law

Actual Use of Force vs. Threatened Use of Force

The above-listed provisions of ch. 776, F.S., expressly address a person's actual use of force, not a person's threatened use of force. While some courts have recognized that a threatened use of force, the firing of a warning shot, is an actual use of force,¹⁴ the statutes do not clearly indicate this.

In recent years, there have been cases in which persons have been convicted of aggravated assault for threatening to use force (e.g., displaying a firearm, firing a "warning shot," etc.) and have been sentenced to mandatory minimum terms of imprisonment pursuant to the 10-20-Life law.¹⁵ In some of these cases, the defendant unsuccessfully argued self-defense.¹⁶ Specifying that the justifications in ch. 776, F.S., apply to threatened use of force may clarify the issue.

III. Effect of Proposed Changes:

SB 448 amends Florida's self-defense law in ch. 776, F.S. The bill expressly authorizes a person to threaten the use of force in self-defense in situations where the actual use of force is lawful under existing law. Additionally, the bill extends the immunity protections in existing law for the lawful use of force in self-defense to persons who threaten the use of force in self-defense.

The bill also contains the following legislative findings and intent:

- People have been criminally prosecuted and sentenced to mandatory minimum terms of imprisonment pursuant to the 10-20-Life law, for threatening to use force in a manner and under circumstances that would have been justifiable under ch. 776, F.S., had force actually been used;
- Criminal and civil immunity are extended to those who threaten to use force if made in a manner and under circumstances that would have been immune under ch. 776, F.S., had force actually been used;
- People who threaten to use force in a manner and under circumstances that are justifiable under ch. 776, F.S., may not be sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, F.S.; and

¹³ Section 776.032(3), F.S.

¹⁴ See, e.g., Hosnedl v. State, 2013 WL 5925402, 404-405 (Fla. 4th DCA 2013) in which a weapon was arguably accidentally discharged; *Stewart v. State*, 672 So.2d 865, 867-868 (Fla. 2nd DCA 1996)(the mere display of a gun without more constitutes non-deadly force); and *Miller v. State*, 613 So.2d 530, 531 (Fla. 3rd DCA 1993)(firing a firearm in the air, even as a so-called "warning shot," constitutes as a matter of law the use of deadly force).

¹⁵ For example, 53 year old Orville Wollard was charged with aggravated assault with a deadly weapon after firing a warning shot into a wall in response to his daughter's boyfriend's aggressive behavior towards his daughter. The Defendant alleged that his daughter's boyfriend had physically attacked him earlier that day and, upon returning to the Defendant's house, shoved his daughter and punched a hole in the wall). The defendant claimed self-defense but was convicted and sentenced to 20-years pursuant to the 10-20-Life law. <u>http://famm.org/orville-lee-wollard/</u> (last visited on November 20, 2013); <u>http://www.theledger.com/article/20090619/NEWS/906195060</u>.

• Defendants sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, F.S., for threatening to use force in a manner and under circumstances justifiable under ch. 776, F.S., are encouraged to apply for executive clemency.

The bill takes 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator indicates that to the extent that people are being prosecuted for threatening to use force in legitimate self-defense, this bill may reduce judicial workload. However, impact is likely insignificant.¹⁷

The Department of Corrections may realize a reduction in beds allocated to inmates convicted of aggravated assault if there are fewer convictions due to successful claims of immunity or self-defense.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁷ Office of the State Courts Administrator, 2014 Judicial Impact Statement for SB 448 (December 30, 2013).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 776.012, 776.013, 776.031, 776.032, 776.041, and 776.051.

IX. 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.

House



LEGISLATIVE ACTION

Senate Comm: FAV 02/11/2014

The Committee on Judiciary (Bradley) recommended the following: Senate Amendment (with title amendment) Between lines 49 and 50 insert: Section 2. Paragraph (a) of subsection (2) and paragraph (a) of subsection (3) of section 775.087, Florida Statutes, is amended to read: 775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.-(2) (a) 1. Any person who is convicted of a felony or an attempt to commit a felony, regardless of whether the use of a

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1 0	we are in an element of the follows and the consistion was found
12 13	weapon is an element of the felony, and the conviction was for:
	a. Murder;
14	<pre>b. Sexual battery;</pre>
15	c. Robbery;
16	d. Burglary;
17	e. Arson;
18	f. Aggravated assault;
19	<u>f.g.</u> Aggravated battery;
20	<u>g.h.</u> Kidnapping;
21	<u>h.</u> i. Escape;
22	<u>i.</u> j. Aircraft piracy;
23	<u>j.k.</u> Aggravated child abuse;
24	<u>k.</u> l. Aggravated abuse of an elderly person or disabled
25	adult;
26	<u>l.</u> m. Unlawful throwing, placing, or discharging of a
27	destructive device or bomb;
28	<u>m.</u> n. Carjacking;
29	<u>n.o.</u> Home-invasion robbery;
30	<u>o.</u> p. Aggravated stalking;
31	<u>p.q.</u> Trafficking in cannabis, trafficking in cocaine,
32	capital importation of cocaine, trafficking in illegal drugs,
33	capital importation of illegal drugs, trafficking in
34	phencyclidine, capital importation of phencyclidine, trafficking
35	in methaqualone, capital importation of methaqualone,
36	trafficking in amphetamine, capital importation of amphetamine,
37	trafficking in flunitrazepam, trafficking in gamma-
38	hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
39	trafficking in Phenethylamines, or other violation of s.
40	893.135(1); or

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q.r. Possession of a firearm by a felon

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and during the commission of the offense, such person actually possessed a "firearm" or "destructive device" as those terms are defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 10 years, except that a person who is convicted for aggravated assault, possession of a firearm by a felon, or burglary of a conveyance shall be sentenced to a minimum term of imprisonment of 3 years if such person possessed a "firearm" or "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 years.

2. Any person who is convicted of a felony or an attempt to commit a felony listed in sub-subparagraphs (a)1.a.-p.q., regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a "firearm" or "destructive device" as defined in s. 790.001 shall be sentenced to a minimum term of imprisonment of 20 years.

3. Any person who is convicted of a felony or an attempt to commit a felony listed in sub-subparagraphs (a)1.a.-<u>p.q.</u>, regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a "firearm" or "destructive device" as

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70	defined in s. 790.001 and, as the result of the discharge, death
71	or great bodily harm was inflicted upon any person, the
72	convicted person shall be sentenced to a minimum term of
73	imprisonment of not less than 25 years and not more than a term
74	of imprisonment of life in prison.
75	(3)(a)1. Any person who is convicted of a felony or an
76	attempt to commit a felony, regardless of whether the use of a
77	firearm is an element of the felony, and the conviction was for:
78	a. Murder;
79	b. Sexual battery;
80	c. Robbery;
81	d. Burglary;
82	e. Arson;
83	f. Aggravated assault;
84	<u>f.g.</u> Aggravated battery;
85	g.h. Kidnapping;
86	<u>h.</u> i. Escape;
87	<u>i.j.</u> Sale, manufacture, delivery, or intent to sell,
88	manufacture, or deliver any controlled substance;
89	j. k. Aircraft piracy;
90	<u>k.</u> l. Aggravated child abuse;
91	<u>l.m.</u> Aggravated abuse of an elderly person or disabled
92	adult;
93	<u>m.</u> n. Unlawful throwing, placing, or discharging of a
94	destructive device or bomb;
95	<u>n.</u> o. Carjacking;
96	<u>o.p.</u> Home-invasion robbery;
97	<u>p.q.</u> Aggravated stalking; or
98	<u> </u>

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COMMITTEE AMENDMENT

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99 capital importation of cocaine, trafficking in illegal drugs, 100 capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking 101 102 in methaqualone, capital importation of methaqualone, 103 trafficking in amphetamine, capital importation of amphetamine, 104 trafficking in flunitrazepam, trafficking in gammahydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, 105 106 trafficking in Phenethylamines, or other violation of s. 107 893.135(1);

and during the commission of the offense, such person possessed a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun as defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 15 years.

113 2. Any person who is convicted of a felony or an attempt to 114 commit a felony listed in subparagraph (a)1., regardless of 115 whether the use of a weapon is an element of the felony, and 116 during the course of the commission of the felony such person 117 discharged a semiautomatic firearm and its high-capacity box 118 magazine or a "machine gun" as defined in s. 790.001 shall be 119 sentenced to a minimum term of imprisonment of 20 years. 120 3. Any person who is convicted of a felony or an attempt to 121 commit a felony listed in subparagraph (a)1., regardless of 122 whether the use of a weapon is an element of the felony, and 123 during the course of the commission of the felony such person 124 discharged a semiautomatic firearm and its high-capacity box 125 magazine or a "machine gun" as defined in s. 790.001 and, as the 126 result of the discharge, death or great bodily harm was 127 inflicted upon any person, the convicted person shall be

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128	sentenced to a minimum term of imprisonment of not less than 25
129	years and not more than a term of imprisonment of life in
130	prison.
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132	======================================
133	And the title is amended as follows:
134	Delete line 3
135	and insert:
136	providing legislative findings and intent; amending s.
137	775.087, F.S.; removing aggravated assault from the
138	list of offenses that qualify for certain minimum
139	mandatory sentences; amending s.

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House



LEGISLATIVE ACTION

Senate Comm: WD 02/11/2014

The Committee on Judiciary (Thrasher) recommended the following: Senate Amendment 1 2 3 Between lines 65 and 66 4 insert: Section 7. Section 776.052, Florida Statutes, is created to 5 6 read: 7 776.052 Threatened use of force.-8 When a person may lawfully use force in self-defense, the 9 discharge of a firearm as a warning and without the intent to 10 cause harm and without causing harm to another is a threat to 11 use force, not the use of deadly force.



LEGISLATIVE ACTION

Senate Comm: WD 02/11/2014 House

The Committee on Judiciary (Thrasher) recommended the following:

Senate Substitute for Amendment (266424) (with title amendment)

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Delete lines 53 - 131
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and insert:

person.-

(1) A person is justified in using force, except deadly force, <u>or threatening to use force</u> against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is

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12	justified in using or threatening to use the use of deadly force
13	and does not have a duty to retreat if:
14	<u>(a)</u> He or she reasonably believes that <u>using or</u>
15	threatening to use such force is necessary to prevent imminent
16	death or great bodily harm to himself or herself or another or
17	to prevent the imminent commission of a forcible felony; or
18	(b) (2) Under those circumstances permitted pursuant to s.
19	776.013.
20	(2) When a person may lawfully use force in self-defense,
21	the discharge of a firearm as a warning and without the intent
22	to cause harm and without causing harm to another is a threat to
23	use force, not the use of deadly force.
24	Section 3. Subsections (1), (2), and (3) of section
25	776.013, Florida Statutes, are amended to read:
26	776.013 Home protection; use or threatened use of deadly
27	force; presumption of fear of death or great bodily harm
28	(1) A person is presumed to have held a reasonable fear of
29	imminent peril of death or great bodily harm to himself or
30	herself or another when using <u>or threatening to use</u> defensive
31	force that is intended or likely to cause death or great bodily
32	harm to another if:
33	(a) The person against whom the defensive force was used <u>or</u>
34	threatened was in the process of unlawfully and forcefully
35	entering, or had unlawfully and forcibly entered, a dwelling,
36	residence, or occupied vehicle, or if that person had removed or
37	was attempting to remove another against that person's will from
38	the dwelling, residence, or occupied vehicle; and
39	(b) The person who uses <u>or threatens to use</u> defensive force
40	knew or had reason to believe that an unlawful and forcible

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entry or unlawful and forcible act was occurring or had 41 42 occurred.

(2) The presumption set forth in subsection (1) does not 43 44 apply if:

(a) The person against whom the defensive force is used or threatened has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b) The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful quardianship of, the person against whom the defensive force is used or threatened; or

(c) The person who uses or threatens to use defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

59 (d) The person against whom the defensive force is used or threatened is a law enforcement officer, as defined in s. 60 943.10(14), who enters or attempts to enter a dwelling, 61 62 residence, or vehicle in the performance of his or her official 63 duties and the officer identified himself or herself in 64 accordance with any applicable law or the person using or 65 threatening to use force knew or reasonably should have known 66 that the person entering or attempting to enter was a law 67 enforcement officer.

(3) A person who is not engaged in an unlawful activity and 69 who is attacked in any other place where he or she has a right

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to be has no duty to retreat and has the right to stand his or her ground and <u>use or threaten to use</u> meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

76 Section 4. Section 776.031, Florida Statutes, is amended to 77 read:

78 776.031 Use or threatened use of force in defense of 79 property others.-A person is justified in using the use of 80 force, except deadly force, or threatening to use force against 81 another when and to the extent that the person reasonably 82 believes that such conduct is necessary to prevent or terminate 83 the other's trespass on, or other tortious or criminal 84 interference with, either real property other than a dwelling or 85 personal property, lawfully in his or her possession or in the 86 possession of another who is a member of his or her immediate 87 family or household or of a person whose property he or she has 88 a legal duty to protect. However, a the person is justified in 89 using the use of deadly force only if he or she 90 91 92 And the title is amended as follows: 93

Delete line 6

95 and insert:

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96 of force; providing that the discharge of a firearm in 97 certain circumstances is not the use of deadly force; 98 amending s. 776.013, F.S.; applying

Page 4 of 4

JU.JU.01720

House



LEGISLATIVE ACTION

Senate Comm: PEND 02/11/2014

The Committee on Judiciary (Bradley) recommended the following: Senate Amendment (with title amendment) Between lines 187 and 188 insert: Section 8. Section 776.09, Florida Statutes, is created to read: <u>776.09</u>.-Notwithstanding the eligibility requirements pursuant to s. 943.0585(2), a person who has an information, indictment, or other charging document either not filed or dismissed by the state attorney, or dismissed by the court because it was found that the person acted in lawful self-

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defense pursuant to the provisions related to the justifiable use of force in ch. 776, is eligible to apply for and receive a certificate of eligibility for expunction under s. 943.0585. This section does not confer any right to the expunction of a criminal history record, and any request for expunction of a criminal history record may be denied at the discretion of the court.

Section 9. Subsection (5) of section 943.0585, Florida Statutes, is renumbered as subsection (6), respectively, and subsection (5) is added to that section, to read:

22 943.0585 Court-ordered expunction of criminal history 23 records.-The courts of this state have jurisdiction over their 24 own procedures, including the maintenance, expunction, and 25 correction of judicial records containing criminal history 26 information to the extent such procedures are not inconsistent 27 with the conditions, responsibilities, and duties established by 28 this section. Any court of competent jurisdiction may order a 29 criminal justice agency to expunge the criminal history record 30 of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice 31 32 agency to expunge a criminal history record until the person 33 seeking to expunge a criminal history record has applied for and 34 received a certificate of eligibility for expunction pursuant to 35 subsection (2). A criminal history record that relates to a 36 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, 37 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 38 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 39 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration 40

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as a sexual predator pursuant to s. 775.21, without regard to 41 42 whether that offense alone is sufficient to require such 43 registration, or for registration as a sexual offender pursuant 44 to s. 943.0435, may not be expunded, without regard to whether adjudication was withheld, if the defendant was found guilty of 45 or pled quilty or nolo contendere to the offense, or if the 46 47 defendant, as a minor, was found to have committed, or pled quilty or nolo contendere to committing, the offense as a 48 49 delinquent act. The court may only order expunction of a 50 criminal history record pertaining to one arrest or one incident 51 of alleged criminal activity, except as provided in this 52 section. The court may, at its sole discretion, order the 53 expunction of a criminal history record pertaining to more than 54 one arrest if the additional arrests directly relate to the 55 original arrest. If the court intends to order the expunction of 56 records pertaining to such additional arrests, such intent must 57 be specified in the order. A criminal justice agency may not 58 expunge any record pertaining to such additional arrests if the 59 order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This 60 section does not prevent the court from ordering the expunction 61 62 of only a portion of a criminal history record pertaining to one 63 arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice 64 65 agency may comply with laws, court orders, and official requests 66 of other jurisdictions relating to expunction, correction, or 67 confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the 68 expunction of any criminal history record, and any request for 69

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70	expunction of a criminal history record may be denied at the
71	sole discretion of the court.
72	(5) Notwithstanding the eligibility requirements pursuant to s.
73	943.0585(2), a person who has an information, indictment, or
74	other charging document either not filed or dismissed by the
75	state attorney, or dismissed by the court because it was found
76	that the person acted in lawful self-defense pursuant to the
77	provisions related to the justifiable use of force in ch. 776,
78	is eligible to apply for and receive a certificate of
79	eligibility for expunction under s. 943.0585. This subsection
80	does not confer any right to the expunction of a criminal
81	history record, and any request for expunction of a criminal
82	history record may be denied at the discretion of the court.
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84	======================================
85	And the title is amended as follows:
86	Delete line 22
87	and insert:
88	officer; creating s. 776.09, F.S.; providing that a
89	person is eligible to apply for and receive a
90	certificate of eligibility for expunction,
91	notwithstanding the eligibility requirements, if the
92	charging document in the case is not filed or is
93	dismissed because it is found that the person acted in
94	lawful self-defense pursuant to the provisions related
95	to the justifiable use of force in ch. 776; amending
96	s. 943.0585, F.S.; providing that a person is eligible
97	to apply for and receive a certificate of eligibility
98	for expunction, notwithstanding the eligibility



99 requirements, if the charging document in the case is 100 not filed or is dismissed because it is found that the 101 person acted in lawful self-defense pursuant to the 102 provisions related to the justifiable use of force in 103 ch. 776; providing an effective date.

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LEGISLATIVE ACTION

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Senate

House

The Committee on Judiciary (Bradley) recommended the following:
Senate Amendment (with title amendment)
Between lines 187 and 188
insert:
Section 8. Section 776.09, Florida Statutes, is created to
read:
776.09 Retention of records pertaining to persons found to
be acting in lawful self-defense; expunction of related criminal
history records
(1) Whenever the state attorney or statewide prosecutor
dismisses an information, indictment, or other charging

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12 document, or decides not to file an information, indictment, or 13 other charging document, because of a finding that the person 14 accused acted in lawful self-defense pursuant to the provisions 15 related to the justifiable use of force in ch. 776, that finding 16 shall be documented in writing and retained in the files of 17 the state attorney or statewide prosecutor.

(2) Whenever a court dismisses an information, indictment, or other charging document because of a finding that the person accused acted in lawful self-defense pursuant to the provisions related to the justifiable use of force in ch. 776, that finding shall be recorded in an order or memorandum, which shall be retained in the court's records.

(3) Under either of these conditions, the person accused may apply for a certificate of eligibility to expunge the associated criminal history record, pursuant to s. 943.0585(5), notwithstanding the eligibility requirements prescribed in subsections (1)(b) and (2) of s. 943.0585.

Section 9. Subsection (5) of section 943.0585, Florida Statutes, is renumbered as subsection (6), respectively, and subsection (5) is added to that section, to read:

32 943.0585 Court-ordered expunction of criminal history 33 records.-The courts of this state have jurisdiction over their 34 own procedures, including the maintenance, expunction, and 35 correction of judicial records containing criminal history 36 information to the extent such procedures are not inconsistent 37 with the conditions, responsibilities, and duties established by 38 this section. Any court of competent jurisdiction may order a 39 criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of 40



41 this section. The court shall not order a criminal justice 42 agency to expunge a criminal history record until the person 43 seeking to expunge a criminal history record has applied for and 44 received a certificate of eligibility for expunction pursuant to subsection (2) or subsection(5). A criminal history record that 45 relates to a violation of s. 393.135, s. 394.4593, s. 787.025, 46 chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 47 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 48 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 49 50 907.041, or any violation specified as a predicate offense for 51 registration as a sexual predator pursuant to s. 775.21, without 52 regard to whether that offense alone is sufficient to require 53 such registration, or for registration as a sexual offender 54 pursuant to s. 943.0435, may not be expunged, without regard to 55 whether adjudication was withheld, if the defendant was found 56 quilty of or pled quilty or nolo contendere to the offense, or 57 if the defendant, as a minor, was found to have committed, or 58 pled guilty or nolo contendere to committing, the offense as a 59 delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident 60 of alleged criminal activity, except as provided in this 61 62 section. The court may, at its sole discretion, order the 63 expunction of a criminal history record pertaining to more than 64 one arrest if the additional arrests directly relate to the 65 original arrest. If the court intends to order the expunction of 66 records pertaining to such additional arrests, such intent must 67 be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the 68 order to expunge does not articulate the intention of the court 69

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70 to expunge a record pertaining to more than one arrest. This 71 section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one 72 73 arrest or one incident of alleged criminal activity. 74 Notwithstanding any law to the contrary, a criminal justice 75 agency may comply with laws, court orders, and official requests 76 of other jurisdictions relating to expunction, correction, or 77 confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the 78 79 expunction of any criminal history record, and any request for 80 expunction of a criminal history record may be denied at the 81 sole discretion of the court. 82 (5) EXCEPTION PROVIDED.-Notwithstanding the eligibility 83

requirements prescribed in subsections (1) (b) and (2), the department shall issue a certificate of eligibility for expunction under this subsection to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, on a form provided by the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates: that an information, indictment, or other charging document was not filed or was dismissed by the state attorney, or dismissed by the court, because it was found that the person acted in lawful self-defense pursuant to the provisions related to justifiable use of force in ch. 776. (b) Each petition to a court to expunge a criminal history record pursuant to subsection (5) is complete only when accompanied by:

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1. A valid certificate of eligibility for expunction issued

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99	by the department pursuant to subsection (5).
100	2. The petitioner's sworn statement attesting that the
101	petitioner is eligible for such an expunction to the best of his
102	or her knowledge or belief.
103	
104	Any person who knowingly provides false information on such
105	sworn statement to the court commits a felony of the third
106	degree, punishable as provided in s. 775.082, s. 775.083, or s.
107	775.084.
108	(c) This subsection does not confer any right to the
109	expunction of a criminal history record, and any request for
110	expunction of a criminal history record may be denied at the
111	discretion of the court.
112	(d) Subsections (3) and (4) shall apply to expunction
113	ordered under subsection (5).
114	(e) The department shall, by rule adopted pursuant to
115	chapter 120, establish procedures pertaining to the application
116	for and issuance of certificates of eligibility for expunction
117	under subsection (5).
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119	======================================
120	And the title is amended as follows:
121	Delete line 22
122	and insert:
123	officer; creating s. 776.09, F.S.; providing that a
124	person is eligible to apply for a certificate of
125	eligibility for expunction, notwithstanding the
126	eligibility requirements, if the charging document in
127	the case is not filed or is dismissed because it is
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CJ.JU.01922

COMMITTEE AMENDMENT

Florida Senate - 2014 Bill No. SB 448



128 found that the person acted in lawful self-defense 129 pursuant to the provisions related to the justifiable 130 use of force in ch. 776; requiring a prosecutor, 131 statewide prosecutor, or court to document and retain 132 such findings; amending s. 943.0585, F.S.; requiring 133 FDLE to provide a certificate of eligibility for 134 expunction, notwithstanding the eligibility 135 requirements, to a person who has a written, certified 136 statement from a prosecutor or statewide prosecutor 137 indicating that the charging document in the case was 138 not filed or was dismissed because it was found that 139 the person acted in lawful self-defense pursuant to 140 the provisions related to the justifiable use of force 141 in ch. 776; providing a penalty for knowingly 142 providing false information on a sworn statement; 143 providing an effective date.

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CJ.JU.01922

By Senator Evers

	2-00388B-14 2014448
1	A bill to be entitled
2	An act relating to the threatened use of force;
3	providing legislative findings and intent; amending s.
4	776.012, F.S.; applying provisions relating to the use
5	of force in defense of persons to the threatened use
6	of force; amending s. 776.013, F.S.; applying
7	presumption relating to the use of deadly force to the
8	threatened use of deadly force in the defense of a
9	residence and similar circumstances; applying
10	provisions relating to such use of force to the
11	threatened use of force; amending s. 776.031, F.S.;
12	applying provisions relating to the use of force in
13	defense of property to the threatened use of force;
14	amending s. 776.032, F.S.; applying immunity
15	provisions that relate to the use of force to the
16	threatened use of force; amending s. 776.041, F.S.;
17	applying provisions relating to the use of force by an
18	aggressor to the threatened use of force; providing
19	exceptions; amending s. 776.051, F.S.; providing that
20	a person is not justified in the threatened use of
21	force to resist an arrest by a law enforcement
22	officer; providing an effective date.
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24	Be It Enacted by the Legislature of the State of Florida:
25	
26	Section 1. (1) The Legislature finds that persons have been
27	criminally prosecuted and have been sentenced to mandatory
28	minimum terms of imprisonment pursuant to s. 775.087, Florida
29	Statutes, for threatening to use force in a manner and under
	Page 1 of 7

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

	2-00388B-14 2014448
30	circumstances that would have been justifiable under chapter
31	776, Florida Statutes, had force actually been used.
32	(2) The Legislature intends to:
33	(a) Provide criminal and civil immunity to those who
34	threaten to use force if the threat was made in a manner and
35	under circumstances that would have been immune under chapter
36	776, Florida Statutes, had force actually been used.
37	(b) Clarify that those who threaten to use force may claim
38	self-defense if the threat was made in a manner and under
39	circumstances that would have been justifiable under chapter
40	776, Florida Statutes, had force actually been used.
41	(c) Ensure that those who threaten to use force in a manner
42	and under circumstances that are justifiable under chapter 776,
43	Florida Statutes, are not sentenced to a mandatory minimum term
44	of imprisonment pursuant to s. 775.087, Florida Statutes.
45	(d) Encourage those who have been sentenced to a mandatory
46	minimum term of imprisonment pursuant to s. 775.087, Florida
47	Statutes, for threatening to use force in a manner and under
48	circumstances that are justifiable under chapter 776, Florida
49	Statutes, to apply for executive clemency.
50	Section 2. Section 776.012, Florida Statutes, is amended to
51	read:
52	776.012 Use or threatened use of force in defense of
53	person.—A person is justified in using <u>or threatening to use</u>
54	force, except deadly force, against another when and to the
55	extent that the person reasonably believes that such conduct is
56	necessary to defend himself or herself or another against the
57	other's imminent use of unlawful force. However, a person is
58	justified in <u>using or threatening to use</u> the use of deadly force
	Page 2 of 7

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

	2-00388B-14 2014448
59	and does not have a duty to retreat if:
60	(1) He or she reasonably believes that using or threatening
61	to use such force is necessary to prevent imminent death or
62	great bodily harm to himself or herself or another or to prevent
63	the imminent commission of a forcible felony; or
64	(2) Under those circumstances permitted pursuant to s.
65	776.013.
66	Section 3. Subsections (1), (2), and (3) of section
67	776.013, Florida Statutes, are amended to read:
68	776.013 Home protection; use <u>or threatened use</u> of deadly
69	force; presumption of fear of death or great bodily harm
70	(1) A person is presumed to have held a reasonable fear of
71	imminent peril of death or great bodily harm to himself or
72	herself or another when using <u>or threatening to use</u> defensive
73	force that is intended or likely to cause death or great bodily
74	harm to another if:
75	(a) The person against whom the defensive force was used <u>or</u>
76	threatened was in the process of unlawfully and forcefully
77	entering, or had unlawfully and forcibly entered, a dwelling,
78	residence, or occupied vehicle, or if that person had removed or
79	was attempting to remove another against that person's will from
80	the dwelling, residence, or occupied vehicle; and
81	(b) The person who uses <u>or threatens to use</u> defensive force
82	knew or had reason to believe that an unlawful and forcible
83	entry or unlawful and forcible act was occurring or had
84	occurred.
85	(2) The presumption set forth in subsection (1) does not
86	apply if:
87	(a) The person against whom the defensive force is used $\underline{\mathrm{or}}$

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SB 448

	2-00388B-14 2014448
88	threatened has the right to be in or is a lawful resident of the
89	dwelling, residence, or vehicle, such as an owner, lessee, or
90	titleholder, and there is not an injunction for protection from
91	domestic violence or a written pretrial supervision order of no
92	contact against that person; or
93	(b) The person or persons sought to be removed is a child
94	or grandchild, or is otherwise in the lawful custody or under
95	the lawful guardianship of, the person against whom the
96	defensive force is used <u>or threatened</u> ; or
97	(c) The person who uses <u>or threatens to use</u> defensive force
98	is engaged in an unlawful activity or is using the dwelling,
99	residence, or occupied vehicle to further an unlawful activity;
100	or
101	(d) The person against whom the defensive force is used <u>or</u>
102	threatened is a law enforcement officer, as defined in s.
103	943.10(14), who enters or attempts to enter a dwelling,
104	residence, or vehicle in the performance of his or her official
105	duties and the officer identified himself or herself in
106	accordance with any applicable law or the person using <u>or</u>
107	threatening to use force knew or reasonably should have known
108	that the person entering or attempting to enter was a law
109	enforcement officer.
110	(3) A person who is not engaged in an unlawful activity and
111	who is attacked in any other place where he or she has a right
112	to be has no duty to retreat and has the right to stand his or
113	her ground and <u>use or threaten to use</u> meet force with force,
114	including deadly force if he or she reasonably believes it is
115	necessary to do so to prevent death or great bodily harm to
116	himself or herself or another or to prevent the commission of a
	Page 4 of 7

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

2014448 2-00388B-14 117 forcible felony. 118 Section 4. Section 776.031, Florida Statutes, is amended to 119 read: 120 776.031 Use or threatened use of force in defense of 121 property others.-A person is justified in using or threatening 122 to use the use of force, except deadly force, against another 123 when and to the extent that the person reasonably believes that 124 such conduct is necessary to prevent or terminate the other's 125 trespass on, or other tortious or criminal interference with, 126 either real property other than a dwelling or personal property, 127 lawfully in his or her possession or in the possession of 128 another who is a member of his or her immediate family or 129 household or of a person whose property he or she has a legal 130 duty to protect. However, a the person is justified in using or 131 threatening to use the use of deadly force only if he or she 132 reasonably believes that such conduct force is necessary to 133 prevent the imminent commission of a forcible felony. A person 134 does not have a duty to retreat if the person is in a place 135 where he or she has a right to be. 136 Section 5. Subsections (1) and (2) of section 776.032, 137 Florida Statutes, are amended to read: 138 776.032 Immunity from criminal prosecution and civil action 139 for justifiable use or threatened use of force.-140 (1) A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified 141 in using such conduct force and is immune from criminal 142 143 prosecution and civil action for the use or threatened use of 144 such force, unless the person against whom force was used or 145 threatened is a law enforcement officer, as defined in s.

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

SB 448

I	2-00388B-14 2014448
146	943.10(14), who was acting in the performance of his or her
147	official duties and the officer identified himself or herself in
148	accordance with any applicable law or the person using <u>or</u>
149	threatening to use force knew or reasonably should have known
150	that the person was a law enforcement officer. As used in this
151	subsection, the term "criminal prosecution" includes arresting,
152	detaining in custody, and charging or prosecuting the defendant.
153	(2) A law enforcement agency may use standard procedures
154	for investigating the use <u>or threatened use</u> of force as
155	described in subsection (1), but the agency may not arrest the
156	person for using <u>or threatening to use</u> force unless it
157	determines that there is probable cause that the force that was
158	used or threatened was unlawful.
159	Section 6. Subsection (2) of section 776.041, Florida
160	Statutes, is amended to read:
161	776.041 Use <u>or threatened use</u> of force by aggressor.—The
162	justification described in the preceding sections of this
163	chapter is not available to a person who:
164	(2) Initially provokes the use <u>or threatened use</u> of force
165	against himself or herself, unless:
166	(a) Such force <u>or threat of force</u> is so great that the
167	person reasonably believes that he or she is in imminent danger
168	of death or great bodily harm and that he or she has exhausted
169	every reasonable means to escape such danger other than the use
170	or threatened use of force which is likely to cause death or
171	great bodily harm to the assailant; or
172	(b) In good faith, the person withdraws from physical
173	contact with the assailant and indicates clearly to the
174	assailant that he or she desires to withdraw and terminate the

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	2-00388B-14 2014448
175	use or threatened use of force, but the assailant continues or
176	resumes the use or threatened use of force.
177	Section 7. Subsection (1) of section 776.051, Florida
178	Statutes, is amended to read:
179	776.051 Use <u>or threatened use</u> of force in resisting arrest
180	or making an arrest or in the execution of a legal duty;
181	prohibition
182	(1) A person is not justified in the use or threatened use
183	of force to resist an arrest by a law enforcement officer, or to
184	resist a law enforcement officer who is engaged in the execution
185	of a legal duty, if the law enforcement officer was acting in
186	good faith and he or she is known, or reasonably appears, to be
187	a law enforcement officer.
188	Section 8. This act shall take effect upon becoming a law.

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 Committee on Judiciary					
BILL:	SB 592	SB 592				
INTRODUCER:	Criminal Justice Committee					
SUBJECT:	Criminal.	Justice				
DATE:	February	10, 2014	REVISED:	03/03/14		
ANAL	YST	STAFI	F DIRECTOR	REFERENCE	ACTION	
Sumner		Canno	n		CJ SPB 7006 as Introduced	
1. Munroe		Cibula		JU	Pre-meeting	

I. Summary:

SB 592 amends s. 944.70, F.S., to include additional conditions for releasing inmates from incarceration. The bill requires the Department of Corrections (DOC) to verify the authenticity of court orders that change a person's release date to an earlier date before releasing the person from incarceration, unless the order received from the clerk of court is accompanied by a confirmation from the issuing judge or authorized designee.

II. Present Situation:

Current Law Relating to When DOC May Release an Inmate

Current law authorizes DOC to release an inmate only after it receives the court's written order from the Clerk of Court. The Clerk of Court is the custodian of the judicial record. There are three ways the Clerk of Court receives sentencing and modification orders:

- From a non-secure drop box or mail.
- Secured direct pick up from the Courts.
- In Court directly from the judge.¹

Section 944.70, F.S., provides that persons who are convicted of a crime committed on or after October 1, 1983, but before January 1, 1994, may be released from incarceration only upon the following conditions:

- Expiration of the person's sentence;
- Expiration of the person's sentence as reduced by accumulated gain-time;
- As directed by an executive order granting clemency;
- Attaining the provisional release date;

¹ PowerPoint presentation from Florida Court Clerks & Comptrollers.

- Placement in a conditional release program pursuant to s. 947.1405, F.S.; or
- Granting of control release pursuant to s. 947.146, F.S.

A person who is convicted of a crime committed on or after January 1, 1994, may be released from incarceration only upon the following conditions:

- Expiration of the person's sentence;
- Expiration of the person's sentence as reduced by accumulated meritorious or incentive gaintime;
- As directed by an executive order granting clemency;
- Placement in a conditional release program pursuant to s. 947.1405, F.S., or a conditional medical release program pursuant to s. 947.149, F.S.; or
- Granting of control release, including emergency control release, pursuant to s. 947.146, F.S.²

Background on Recent Incidents Using Fraudulent Orders

In an e-mail dated July 2, 2013, Michael R. Ramage, General Counsel for the Florida Department of Law Enforcement (FDLE) notified DOC that inmates having long sentences had recently attempted to secure reduction of sentences through use of fraudulent court orders.³ He stated that the "scheme" involved preparation of legitimate-looking orders that are filed in the court and then presented to the Department of Corrections or others to secure a reduction of a sentence. He further stated that, in one case, an inmate was actually released.⁴ Though the inmate was captured, Mr. Ramage requested DOC's help in getting the word out and that "the best success in curbing this abuse is through greater awareness on everyone's part."⁵

In late August and September of 2013, Joseph Jenkins and Charles Walker were released from the Franklin County Correctional Institution after the Department of Corrections received fraudulent release documents from the Orange County Clerk of Court. The FDLE along with Bay County Sheriff's Office, Panama City Police Department, and the U.S. Marshals Service Task Force arrested both inmates on October 19, 2013.⁶ An FDLE investigation revealed that the release was part of a larger conspiracy involving six current and former inmates of the Department of Corrections.

In the meetings of the Senate Criminal Justice Committee on November 4, 2013, and the meeting of the Senate Appropriations Subcommittee on Criminal and Civil Justice on November 6, 2013, there was a briefing by FDLE, DOC, the Clerk of Courts and the State Attorneys on remedial actions that were taken based on the recent escapes and the use of fraudulent sentencing modification documents.

² Section 944.70(1)(b), F.S.

³ Correspondence between Florida Department of Law Enforcement staff and Senate Criminal Justice staff (July 2, 2014) (on file with the Senate Committee on Judiciary).

⁴ Id.

⁵ Id.

⁶ December 19, 2013 News Release, Florida Department of Law Enforcement.

The FDLE's Commissioner, Gerald Bailey, testified before the Senate that the release of the inmates continued to be part of an ongoing investigation. Commissioner Bailey further testified that due to lack of good audit trails, the investigation is still underway to determine how the documents got to the Clerk's office. Commissioner Bailey revealed that confidential sources, who were inmates, stated that the documents came from inside the prison. Commissioner Bailey also stated that there was no evidence that any employees from the Orange County Clerk's Office were involved.⁷

Lee Adams, Chief of the Bureau of Admission and Release at the Department of Corrections, gave a PowerPoint presentation on fraudulent court orders. During the presentation, Chief Adams stated that the fundamental duty of the DOC is to execute sentencing orders by calculating release dates. When the lawful sentence ends, the DOC no longer has the authority to hold the inmate and the inmate has a constitutional right to be at liberty. He stated that DOC's proof of lawful detention is based solely on the court's written order.

Chief Adams stressed that there is a presumption of validity of the Order on which the department relies. Chief Adams explained that during the standard release process, there is a 180-day time period from the comprehensive record review, contact with a social service provider, and the final release phase. He explained that there is also an immediate release process that takes only 2 hours but with the same safeguards in place.

Since January 2010, Chief Adams reported that 61 life sentences for murder, attempted murder, or manslaughter were reduced or vacated. During FY 2012-13, more than 4,100 court orders were reduced or vacated. It was noted that DOC does not evaluate the legality of the order; however, it does recognize and seek clarification of discrepancies involving the factual record and internal inconsistences within orders.

A PowerPoint presentation by the Florida Court Clerks and Comptrollers set forth its proposed strategies for fraud prevention in document processing. Its strategies are to:

- Establish a secure process for the delivery of documents between the Judge and the Clerk.
- Establish a secure location in a non-public work area to process documents.
- Establish a secure process for delivering or receiving documents from the State Attorney and local detention or jail facilities.⁸

An additional step in verification procedures also discussed included having the Clerk review Orders for unusual circumstances including unusual signatures, incorrect spellings, and incorrect court type or document style.

Statewide forms for notifying the Court, a uniform procedure for filing such notification forms, and an adoption of uniform procedure of notification to DOC of order verification were also proposed.

⁷ November 4, 2013 Senate Criminal Justice Committee and the November 6, 2013 Senate Appropriations Subcommittee on Criminal and Civil Justice.

⁸ Florida Court Clerks and Comptrollers, PowerPoint presentation, "Fraudulent Documents: Document Processing and Fraud Prevention Standards" (2013).

Recent Developments in E-Filing Court Documents

E-filing standards were mandated by the Supreme Court for filings in criminal cases beginning on February 3, 2014.⁹ The Supreme Court has begun discussions at the statewide level for judges to use the e-portal for their orders. This use of the e-portal would provide a method to authenticate judicial orders through secured electronic transmission from the Court.

III. Effect of Proposed Changes:

The bill amends s. 944.70, F.S., to include additional conditions for releasing inmates from incarceration. The bill requires the Department of Corrections (DOC) to verify the authenticity of court orders that change a person's release date to an earlier date before releasing the person from incarceration, unless the order received from the clerk of court is accompanied by a confirmation from the issuing judge or authorized designee.

The bill takes effect July 1, 2014.

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.

⁹ Electronic Filing of Criminal Cases in the Trial Courts of Florida via the Florida Courts E-Filing Portal, Admin. Order No. AOSC13-48 (Fla. September 27, 2013), available at: <u>http://www.floridasupremecourt.org/clerk/adminorders/2013/AOSC13-48.pdf#xml=http://199.242.69.43/texis/search/pdfhi.txt?query=AOSC13-48&pr=Florida+Supreme+Court&prox=page&rorder=1000&rprox=1000&rdfreq=500&rwfreq=500&rlead=1000&rdepth=0&sufs=2&order=r&cq=&id=5249aff617 (last visited February 4, 2014).</u>

C. Government Sector Impact:

The DOC may experience additional workload as a result of this bill, but the DOC anticipates that any additional workload will be insignificant.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 944.70 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of 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.

¹⁰ Telephone interview with staff of the Florida Department of Corrections (Feb. 11, 2014).

By the Committee on Criminal Justice

	591-00954-14 2014592
1	A bill to be entitled
2	An act relating to criminal justice; amending s.
3	944.70, F.S.; requiring the Department of Corrections
4	to verify the authenticity of certain court orders
5	before releasing a person from incarceration;
6	providing an exception; providing an effective date.
7	
8	Be It Enacted by the Legislature of the State of Florida:
9	
10	Section 1. Subsection (3) is added to section 944.70,
11	Florida Statutes, to read:
12	944.70 Conditions for release from incarceration
13	(3) If a court order has the effect of changing a person's
14	release date to an earlier date, the department must verify the
15	authenticity of the order with the issuing judge before
16	releasing the person from incarceration unless the order
17	received from the clerk of court is accompanied by a
18	confirmation from the issuing judge or authorized designee
19	verifying the authenticity of the order.
20	Section 2. This act shall take effect July 1, 2014.

Page 1 of 1

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.)

	Pre	epared By: The Professional	Staff of the Commi	ittee on Judiciary		
BILL:	CS/SB 182	CS/SB 182				
INTRODUCER	JCER: Children, Families, and Elder Affairs Committee and Senator Stargel					
SUBJECT: Sexual Offend		fenders				
DATE: March 3, 2014		2014 REVISED:				
ANA	LYST	STAFF DIRECTOR	REFERENCE	ACTION		
1. Clodfelter		Cannon		Favorable		
2. Hendon		Hendon		Fav/CS		
3. Brown Cibula		JU	Pre-meeting			

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 182 redefines what constitutes child pornography. Under current law, child pornography means "any image depicting a minor engaged in sexual conduct." Under the bill, child pornography also includes a "visual depiction that has been created, adapted, or modified to appear that a minor is engaging in sexual conduct." As a result of the revised definition, child pornography will include composite images that combine or morph the image of an actual minor's face onto the body of an adult. The revised definition applies to criminal offenses relating to the possession or promotion of child pornography and sexual performance by a child.

The bill also generally prohibits certain sexual offenders who are on parole, probation, or community control from viewing or possessing any obscene, pornographic, or sexually stimulating material. In contrast, current law generally prohibits a sexual offender from viewing or possessing only those materials that are relevant to an offender's deviant behavior pattern.

II. Present Situation:

Child Pornography and Child Abuse

Section 775.0847, F.S., prohibits the possession and promotion of child pornography. This provision defines the term "child pornography" as "any image depicting a minor engaged in

sexual conduct."¹ A minor is defined as a child under the age of 18.² Violations of certain offenses³ are reclassified to the next higher degree, either from a third degree to a second degree felony or from a second degree to a first degree felony, if the offender possesses 10 or more images of child pornography and at least one image portrays:

- A child under the age of 5;
- Sadomasochistic abuse of a child;
- Sexual battery of a child; or
- Sexual bestiality involving a child.⁴

Section 827.071, F.S., makes conduct involving the sexual performance of a child punishable as a second degree felony.⁵ Sexual performance of a child involves:

- Employing, authorizing, or inducing a child under 18 to engage in a sexual performance;
- Consenting as a parent to participation of their child in a sexual performance; or
- Promoting a sexual performance involving a child.⁶

In *Parker v. State*, the Second District Court of Appeal reviewed a case in which the defendant created composite images of children's heads on adult women's nude or partially nude bodies engaged in sexual activity.⁷ Prosecuted under s. 827.071(5), F.S., as an unlawful sexual performance of a child, the court ruled that the defendant did not violate the law:

It bears repeating that a person is guilty of possessing child pornography if he "knowingly possess[es] a photograph, ... representation, or other presentation in which, in whole or in part, he or she knows to include *any sexual conduct by a child*." ... (emphasis added). No matter how one parses the words, section 827.071 requires that the depicted sexual conduct be that of a child.⁸

Citing the reasoning of *Stelmack v. State*,⁹ the *Parker* court ruled as dispositive that the legislative history of s. 827.071, F.S., as documented in a Florida House of Representatives staff analysis, indicates a clear intent to prevent exploitation of children in sexual performances.¹⁰

¹ Section 775.0847(1)(b), F.S.

² Section 775.0847(1)(a), F.S.

³ These offenses are: Computer pornography involving a child, including traveling to meet a minor after Internet contact (s. 847.0135, F.S.); Transmission of child pornography (s. 847.0137, F.S.); Email transmission of material harmful to a minor (s. 847.0138, F.S.); and Sexual performance by a child (s. 827.071, F.S.). A child is defined as a person under the age of 18 (s. 827.071(2) and (3), F.S.).

⁴ Section 775.0847(2) and (3), F.S.

⁵ Section 827.071(2) and (3), F.S.

⁶ A sexual performance is defined as actual or simulated sexual conduct depicting a series of images, including through a play, motion picture, photograph, or dance Sections 827.071(1)(h) and (i), (2), and (4) F.S.

⁷ Parker v. State, 81 So. 3d 451, 452 (Fla. 2d DCA 2011).

⁸ *Id*. at 453.

⁹ Stelmack v. State, 58 So. 3d 874, 876 (Fla. 2d DCA 2010).

¹⁰ "The intent of this legislation is to facilitate the prosecution of persons who use or promote any *sexual performance by a child*, which is not necessarily obscene. A distinction is drawn between child abuse and pornography, with the focus on the child abuser. This legislation is directed at two types of people–those who use children *in sexual performances* and those

The *Parker* court acknowledged that a federal court may have reached a different result, based on the broad sweep of the federal child pornography law.¹¹

As the federal experience reflects, if our legislature wants to follow Congress's example and prohibit the possession of the types of photographs involved here, we are confident that it can, and perhaps should, craft an appropriate statute.¹²

Conditional Release

Conditional release requires mandatory post-incarceration supervision for offenders who are sentenced for certain violent crimes and have served a prior felony commitment, or are sentenced as a habitual offender, violent habitual offender, violent career criminal, or sexual predator.¹³ An offender who is subject to conditional release is supervised for a period of time equal to the gain-time he or she received in prison.

The Department of Corrections supervises persons on conditional release under s. 947.1405, F.S. The Parole Commission sets the conditions of release for persons who have served 85 percent of their sentence. The remaining 15 percent of the sentence can be served under conditional release. Any violations of the conditions can return the inmate to prison to serve the remainder of his or her term.

Community Supervision through Probation and Community Control

Probation is a form of community supervision requiring specified contacts with parole and probation officers.¹⁴ Community control is intensive, supervised custody in the community, which includes surveillance on weekends and holidays.¹⁵ Sex offender probation and sex offender community control are forms of intensive supervision, with or without electronic monitoring, which emphasize treatment and supervision of a sex offender based on an individualized treatment plan.¹⁶ Terms and conditions of probation and community control are set by the court.¹⁷

Community supervision may be ordered either as an alternative to prison or following a period of incarceration as part of a split sentence.

¹¹ 18 U.S.C.A. s. 2256(8), defines child pornography to read, in part, as "any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where–(C) such visual depiction has been created, *adapted, or modified to appear* that an identifiable minor is engaging in sexually explicit conduct" (emphasis added).

who, being the parent or guardian of the child, "consent" to the child's participation *in such activities*. Fla. H.R. Comm. on Crim. Just., HB 148 (1983 Staff Analysis (April 14, 1983)).

¹² *Parker*, 81 So. 3d at 457.

¹³ Florida Parole Commission, Conditional Release, <u>https://fpc.state.fl.us/Postrelease.htm</u> (Last visited February 26, 2014).

¹⁴ Section 948.001(8), F.S.

¹⁵ Section 948.001(3), F.S.

¹⁶ Section 948.001(13), F.S.

¹⁷ Sections 948.03(1) and 948.101(1), F.S.

The Department of Corrections supervises all persons who are sentenced to community supervision by the circuit court. Section 948.03, F.S., provides a list of standard conditions of probation and s. 948.101, F.S, provides a list of standard conditions of community control. The court also has the discretion to order special conditions in particular cases.

Sections 947.1405 and 948.30, F.S., set forth additional standard conditions of probation and community control that must be ordered for any offender who is sentenced to community supervision for designated sexual offenses.¹⁸ Section 947.1405, F.S., requires an offender convicted of one of the designated sexual offenses to comply with conditions such as:

- A curfew of 10 p.m. to 6 a.m.;
- A prohibition on living within 1,000 feet of a school, child care facility or other place where children congregate if the victim was under the age of 18;
- Successful completion of a sex offender treatment program;
- A prohibition on contact with the victim;
- A prohibition on contact with children under the age of 18 if the victim was under the age of 18; and
- A prohibition on viewing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services *relevant to the offender's deviant behavior pattern unless otherwise indicated in the treatment plan*.¹⁹

Section 948.30(1)(g), F.S., also prohibits, unless otherwise part of the treatment plan, the offender from "viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are *relevant to the offender's deviant behavior pattern*."²⁰

In *Kasischke v. State*, the Florida Supreme Court reviewed conflicting decisions from two appellate courts on the issue on the restriction on sexual offenders from having access to pornography as a condition of community supervision.²¹ The Third District Court of Appeal held that offenders are prohibited from viewing any material regardless of whether the materials are part of a deviant behavior pattern.²² The Second District Court of Appeal reached the opposite finding, however, and required the state to establish a nexus between the materials and the deviant behavior pattern of the offender.²³ The Supreme Court approved the holding of the Second District Court of Appeal: "We hold that the phrase "relevant to the offender's deviant behavior pattern" qualifies each of the prohibitions"²⁴ In so doing, the Court acknowledged

¹⁸ The designated offenses are: chapter 794, F.S. (sexual battery); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 827.071, F.S. (using a child in a sexual performance or promoting sexual performance by a child); s. 847.0135(5), F.S. (computer pornography, computer offenses against children, and traveling to meet a minor for sexual purposes); and s. 847.0145, F.S. (selling or buying of minors for sexual purposes). ¹⁹ Section 947.1405(7), F.S.

²⁰ The statute includes an exception for the prohibited materials if "otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program." There are no reported opinions of cases in which this exception was raised as a defense.

²¹ Kasischke v. State, 991 So. 2d 803, 805 (Fla. 2008),

²² *Id.* at 805.

²³ *Id.* at 806.

²⁴ *Id*. at 815.

ambiguity in the law and the need to resort to the rule of lenity in reaching its decision.²⁵The Court's decision was based on its interpretation of the relevant statutes, not on a finding that a sexual offender has a constitutional right to pornography.

III. Effect of Proposed Changes:

This bill redefines what constitutes child pornography and generally prohibits certain sexual offenders from accessing any pornography.

Child Pornography

Under current law, child pornography means "any image depicting a minor engaged in sexual conduct." Under the bill, child pornography also includes a "visual depiction that has been created, adapted, or modified to appear that a minor is engaging in sexual conduct." The revised definition closely tracks the definition of child pornography in federal law.²⁶

As a result of the revised definition, child pornography under Florida law will include composite images that combine or morph the image of an actual minor's face onto the body of an adult. However, proving the identity of the child is not required to successfully prosecute a person for an offense.²⁷ The revised definition of child pornography applies to criminal offenses relating to the possession or promotion of child pornography and sexual performance by a child.

The bill also prohibits certain sexual offenders who are on parole, probation, or community control from viewing or possessing any obscene, pornographic, or sexually stimulating material unless authorized by a qualified practitioner in the sexual offender treatment program. Current law prohibits a sexual offender from viewing or possessing only those materials that are relevant to an offender's deviant behavior pattern unless otherwise indicated in the offender's treatment plan.

With respect to the offense of sexual performance by a child, the bill defines the medium on which child pornography may be created to include a "photograph, film, video, picture, computer or computer-generated image or picture, or digitally created image or picture, whether made or produced by electronic, mechanical, or other means." This is also consistent with the definition of child pornography under federal law.²⁸

²⁵ The rule of lenity, a rule of statutory construction cited in .0Florida law, provides "The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused" (s. 775.021(1), F.S.) The Court recognized difficulty in interpreting the law and noted that even the dissenting opinion in the case reaches yet a third conclusion, other than the appellate courts' interpretations of the statute. *Id.* at 808.

²⁶ See 18 U.S.C. s. 2256(8)(A) and (C). The revised definition does not include virtual child pornography or exclusively computer-generated child pornography as described in 18 U.S.C. 2256(8)(B) which was found unconstitutional by the U.S. Supreme Court in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002). No actual children are filmed in virtual child pornography and the government could not sufficiently prove the connection between viewing virtual child pornography and child abuse. *Id.* at 253.

 $^{^{27}}$ Similarly, a prosecution for a child pornography offense under federal law does not require proof of the identity of the minor used in the pornography. See 18 U.S.C. s. 2256(9)(B).

²⁸ See 18 U.S.C. s. 2256(8).

Access to Pornography by Sexual Offenders

The bill requires the Parole Commission to prohibit certain sexual offenders on conditional release, and the court to prohibit probationers and community controlees on community supervision, from owning, or possessing obscene, pornographic, or sexually stimulating visual or auditory material unless preserving access is part of a sexual offender treatment plan, when the original offense constituted:

- Sexual battery (ch. 794, F.S.);
- Lewd or lascivious offenses on a victim under the age of 16 (s. 800.04, F.S.);
- Sexual performance by a child as a form of child abuses (s. 827.071, F.S.);
- Certain computer transmissions if the defendant knows or should know that the transmission has been viewed by a victim under the age of 16 (s. 847.0135(5), F.S.); or
- The selling or buying of minors for the purpose of visually depicting the minor in sexually explicit conduct (s. 847.0145, F.S.).

In cases relating to a violation of community supervision or a violation of conditional release, this bill will effectively remove the requirement that the state prove that sexual materials accessed by the offender are relevant to the offender's deviant behavior pattern. Instead, the bill imposes a blanket prohibition on viewing or possessing these materials, unless access is authorized in the treatment plan provided by a qualified practitioner in the sexual offender treatment program.

Effective Date

The bill takes effect October 1, 2014.

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:

Although numerous First Amendment challenges have been made to government regulation of pornography, the United States Supreme Court has definitively ruled that

the First Amendment does not attach to the dissemination of child pornography.²⁹ "[T]he use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child. That judgment, we think, easily passes muster under the First Amendment."³⁰

The court in *U.S. v. Hotaling* reviewed a First Amendment challenge to child pornography, in which the defendant was prosecuted for digitally altering, or morphing images of actual children's faces onto bodies of adult females engaged in sexual activity.³¹ The court held that morphed images are not protected speech.³² In so doing, the court ruled the images different from virtual child pornography in that actual minors are portrayed and can be identified.³³

the interests of actual minors are implicated when their faces are used in creating morphed images that make it appear that they are performing sexually explicit acts. ... here we have six identifiable minor females who were at risk of reputational harm and suffered the psychological harm of knowing that their images were exploited and prepared for distribution by a trusted adult.³⁴

However, in 2008, the New Hampshire Supreme Court reached a different conclusion in *State v. Zidel.*³⁵

In cases upholding laws prohibiting composite child pornography, which is prohibited by the bill, the courts held that the government has a legitimate interest in protecting the reputation of the children whose faces were used in the making of the pornography.³⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²⁹ New York v. Ferber, 458 U.S. 747, 756-757 (1982). In *Ferber*, the Court upheld as a compelling state interest protection of the physical and psychological well-being of children. *Id.* at 756, 761.

³⁰ *Id.* at 756-58.

³¹ U.S. v. Hotaling, 634 F.3d 725, 727 (2d Cir. 2011).

³² *Id.* at 730.

³³ *Id*. at 729.

³⁴ *Id.* at 729-730.

³⁵ See *State v. Zidel*, 940 A.2d 255 (2008).

³⁶Ashcroft v. Free Speech Coalition, 535 U.S. 234, 249 (2002), further included reputational harm in the psychological harm referred to in *Ferber*, similar to a defamatory statement. The principle enumerated in *Ashcroft* has been cited in other cases: *In re Grant*, 167 Cal.Rptr.3d, 401, 406 (CA 2014).; *U.S. v. Loreng*, 956 F. Supp. 2d 213, 221 (D.C. 2013).

C. Government Sector Impact:

Depending upon the compliance of offenders with the expanded prohibition against accessing pornography, the bill may result in more prosecutions for violations of conditions of community supervision. However, removing the requirement for the state to prove that the material is "relevant to the offender's deviant behavior pattern" may also relieve the need to present expert testimony on that element of an offense. The Criminal Justice Impact Conference reviewed the impact of CS/HB 73 on prison beds on January 30, 2014. CS/HB 73, however, includes only the provisions of this bill which restrict the possession of any pornography by certain sexual offenders. The CJIC determined that CS/HB 73 would have an indeterminate fiscal impact.³⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 775.0847, 827.071, 921.0022, 947.1405, and 948.30 of the Florida Statutes.

This bill reenacts subsection (2) of section 794.0115, F.S.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on February 11, 2014:

- Amends s. 775.0847(1), F.S., relating to child pornography to amend the definition of "child pornography" to include a visual depiction that has been modified to appear that a minor is engaging in sexual conduct. The CS also creates a definition of "minor" to be a person less than 18 years old at the time the pornography was created whether the minor's image was photographed or modified.
- Amends s. 827.071, F.S., to use the new definition of "child pornography" and "minor" in the penalties section for sexual performance by a child.
- Amends s. 921.0022(3), F.S., relating to the criminal code for felonies to clarify that viewing child pornography or other material including sexual conduct by a child is a 2nd and 3rd degree felony.
- Amends s. 947.1405, F.S., to add that on or after October 1, 2014, the Parole Commission must prohibit persons on conditional release convicted of certain sexual offenses from possessing any pornography.

³⁷ Economic and Demographic Research website, online at

http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm (last visited February 27, 2014).

B. Amendments:

None.

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

 $\boldsymbol{B}\boldsymbol{y}$ the Committee on Children, Families, and Elder Affairs; and Senator Stargel

	586-01755-14 2014182c1
1	A bill to be entitled
2	An act relating to child pornography; amending s.
3	775.0847, F.S.; redefining the term "child
4	pornography" and defining the term "minor"; amending
5	s. 827.071, F.S.; defining the terms "child
6	pornography" and "minor"; conforming cross-references;
7	including possession of child pornography within
8	specified criminal offenses; providing criminal
9	penalties; amending s. 921.0022, F.S.; revising
10	provisions of the offense severity ranking chart of
11	the Criminal Punishment Code to conform to changes
12	made by the act; amending ss. 947.1405 and 948.30,
13	F.S.; prohibiting certain conditional releasees,
14	probationers, or community controllees from viewing,
15	accessing, owning, or possessing any obscene,
16	pornographic, or sexually stimulating material;
17	providing an exception; reenacting s. 794.0115(2),
18	F.S., relating to dangerous sexual felony offenders
19	and mandatory sentencing thereof, to incorporate the
20	amendment to s. 827.071, F.S., in references thereto;
21	providing an effective date.
22	
23	Be It Enacted by the Legislature of the State of Florida:
24	
25	Section 1. Paragraph (b) of subsection (1) of section
26	775.0847, Florida Statutes, is amended, present paragraphs (c)
27	through (f) of that subsection are redesignated as paragraphs
28	(d) through (g), respectively, and a new paragraph (c) is added
29	to that subsection, to read:

Page 1 of 14

586-01755-14 2014182c1 30 775.0847 Possession or promotion of certain images of child 31 pornography; reclassification.-32 (1) For purposes of this section: (b) "Child pornography" means any image depicting a minor 33 34 engaged in sexual conduct or such visual depiction that has been 35 created, adapted, or modified to appear that a minor is engaging 36 in sexual conduct. Proof of the identity of the minor is not 37 required in order to find a violation of this section. 38 (c) "Minor" means a person who had not attained the age of 39 18 years at the time the visual depiction was created, adapted, 40 or modified, or whose image while he or she was a minor was used 41 in creating, adapting, or modifying the visual depiction, and 42 who is recognizable as an actual person by his or her facial 43 features, likeness, or other distinguishing characteristics. 44 Section 2. Present paragraphs (a), (b), and (c) through (j) 45 of subsection (1) of section 827.071, Florida Statutes, are 46 redesignated as paragraphs (b), (c), and (e) through (1), 47 respectively, present paragraph (j) of that subsection is amended, new paragraphs (a) and (d) are added to that 48 49 subsection, and subsection (4) and paragraph (a) of subsection 50 (5) of that section are amended, to read: 51 827.071 Sexual performance by a child; penalties.-(1) As used in this section, the following definitions 52 53 shall apply: 54 (a) "Child pornography" means a visual depiction, 55 including, but not limited to, a photograph, film, video, 56 picture, computer or computer-generated image or picture, or digitally created image or picture, whether made or produced by 57 electronic, mechanical, or other means, of sexual conduct, if 58

Page 2 of 14

586-01755-14 2014182c1 59 the production of such visual depiction involves the use of a 60 minor engaging in sexual conduct, or if such visual depiction has been created, adapted, or modified to appear that a minor is 61 engaging in sexual conduct. Proof of the identity of the minor 62 63 is not required in order to find a violation of this section. 64 (d) "Minor" has the same meaning as provided in s. 65 775.0847. 66 (1) (1) (j) "Simulated" means the explicit depiction of conduct set forth in paragraph (j) (h) which creates the appearance of 67 68 such conduct and which exhibits any uncovered portion of the 69 breasts, genitals, or buttocks. 70 (4) It is unlawful for any person to possess with the 71 intent to promote any child pornography or any other photograph, 72 motion picture, exhibition, show, representation, or other 73 presentation which, in whole or in part, includes any sexual 74 conduct by a child. The possession of three or more copies of 75 such photograph, motion picture, representation, or presentation 76 is prima facie evidence of an intent to promote. Whoever 77 violates this subsection commits is guilty of a felony of the 78 second degree, punishable as provided in s. 775.082, s. 775.083, 79 or s. 775.084. 80 (5) (a) It is unlawful for any person to knowingly possess, 81 control, or intentionally view child pornography or any other a photograph, motion picture, exhibition, show, representation, 82

image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a

Page 3 of 14

	586-01755-14		2014182	c1	
88	separate offense.	If such p	photograph, motion picture,		
89	exhibition, show, representation, image, data, computer				
90	depiction, or othe	er present	tation includes sexual conduct by more	е	
91	than one child, th	en each s	such child in each such photograph,		
92	motion picture, ex	hibition,	, show, representation, image, data,		
93	computer depiction	, or othe	er presentation that is knowingly		
94	possessed, control	led, or :	intentionally viewed is a separate		
95	offense. A person	who viola	ates this <u>paragraph</u> subsection commit	S	
96	a felony of the th	ird degre	ee, punishable as provided in s.		
97	775.082, s. 775.08	3, or s.	775.084.		
98	Section 3. Pa	ragraph	(e) of subsection (3) of section		
99	921.0022, Florida	Statutes	, is amended to read:		
100	921.0022 Crim	inal Pun:	ishment Code; offense severity ranking	g	
101	chart				
102	(3) OFFENSE S	EVERITY H	RANKING CHART		
103	(e) LEVEL 5				
104					
	Florida	Felony	Description		
	Statute	Degree			
105					
	316.027(1)(a)	3rd	Accidents involving personal		
			injuries, failure to stop;		
			leaving scene.		
106					
	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.		
107					
	322.34(6)	3rd	Careless operation of motor		
			vehicle with suspended license,		
			resulting in death or serious		
I					

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			bodily injury.
108			
	327.30(5)	3rd	Vessel accidents involving
			personal injury; leaving scene.
109			
	379.367(4)	3rd	Willful molestation of a
			commercial harvester's spiny
			lobster trap, line, or buoy.
110			
	379.3671(2)(c)3.	3rd	Willful molestation,
			possession, or removal of a
			commercial harvester's trap
			contents or trap gear by
			another harvester.
111			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs
110			knowing HIV positive.
112	440 10 (1) (~)	Que el	Tailuna ta abtain wankawa(
	440.10(1)(g)	2nd	Failure to obtain workers'
113			compensation coverage.
TTO	440.105(5)	2nd	Unlawful solicitation for the
	440.103(3)	2110	purpose of making workers'
			compensation claims.
114			compendation craimo.
	440.381(2)	2nd	Submission of false,
			misleading, or incomplete
			information with the purpose of
			avoiding or reducing workers'

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			compensation premiums.
115			
	624.401(4)(b)2.	2nd	Transacting insurance without a
			certificate or authority;
			premium collected \$20,000 or more but less than \$100,000.
116			
	626.902(1)(c)	2nd	Representing an unauthorized
			insurer; repeat offender.
117			
	790.01(2)	3rd	Carrying a concealed firearm.
118	790.162		
	/90.162	2nd	Threat to throw or discharge destructive device.
119			
	790.163(1)	2nd	False report of deadly
			explosive or weapon of mass
			destruction.
120	FOO OO (1)	0	
	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
121			Shotgan of machine gan.
	790.23	2nd	Felons in possession of
			firearms, ammunition, or
			electronic weapons or devices.
122			
	800.04(6)(c)	3rd	Lewd or lascivious conduct;
100			offender less than 18 years.
123			

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	800.04(7)(b)	2nd	Lewd or lascivious exhibition;
			offender 18 years or older.
124			
	806.111(1)	3rd	Possess, manufacture, or
			dispense fire bomb with intent
			to damage any structure or
			property.
125			
	812.0145(2)(b)	2nd	Theft from person 65 years of
			age or older; \$10,000 or more
			but less than \$50,000.
126			
	812.015(8)	3rd	Retail theft; property stolen
			is valued at \$300 or more and
			one or more specified acts.
127			
	812.019(1)	2nd	Stolen property; dealing in or
			trafficking in.
128			
	812.131(2)(b)	3rd	Robbery by sudden snatching.
129			
	812.16(2)	3rd	Owning, operating, or
			conducting a chop shop.
130			
	817.034(4)(a)2.	2nd	Communications fraud, value
			\$20,000 to \$50,000.
131			
	817.234(11)(b)	2nd	Insurance fraud; property value
			\$20,000 or more but less than
			Page 7 of 14

	586-01755-14		2014182c1 \$100,000.
132	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
133	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.
135	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
136	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
100	827.071(4)	2nd	Possess with intent to promote any <u>child pornography or other</u> Page 8 of 14

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			photographic material, motion
			picture, etc., which includes
			sexual conduct by a child.
137			
	827.071(5)	3rd	Possess, control, or
			intentionally view any <u>child</u>
			pornography or other
			photographic material, motion
			picture, etc., which includes
			sexual conduct by a child.
138			
	839.13(2)(b)	2nd	Falsifying records of an
			individual in the care and
			custody of a state agency
			involving great bodily harm or
			death.
139			
	843.01	3rd	Resist officer with violence to
			person; resist arrest with
			violence.
140			
	847.0135(5)(b)	2nd	Lewd or lascivious exhibition
			using computer; offender 18
			years or older.
141			
	847.0137	3rd	Transmission of pornography by
	(2) & (3)		electronic device or equipment.
142			
	847.0138	3rd	Transmission of material
			Page 9 of 14

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	(2) & (3)		harmful to minors to a minor by
			electronic device or equipment.
143			
	874.05(1)(b)	2nd	Encouraging or recruiting
			another to join a criminal
			gang; second or subsequent
			offense.
144			
	874.05(2)(a)	2nd	Encouraging or recruiting
			person under 13 to join a
			criminal gang.
145			
	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).
146			
	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver
			cannabis (or other s.
			893.03(1)(c), (2)(c)1.,
			(2)(c)2., (2)(c)3., (2)(c)5.,
			(2)(c)6., (2)(c)7., (2)(c)8.,
			(2)(c)9., (3), or (4) drugs)
			within 1,000 feet of a child
			care facility, school, or
			state, county, or municipal
			park or publicly owned
			recreational facility or

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			community center.
147			
	893.13(1)(d)1.	lst	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.
148	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.
149			
	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.
150	893.13(4)(b)	2nd	Deliver to minor cannabis (or
		21104	other s. 893.03(1)(c),
ļ			
			Page 11 of 14

	586-01755-14 2014182c1					
	(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).					
151						
	893.1351(1) 3rd Ownership, lease, or rental for					
	trafficking in or manufacturing					
	of controlled substance.					
152						
153	Section 4. Subsection (13) is added to section 947.1405,					
154	Florida Statutes, to read:					
155	947.1405 Conditional release program					
156	(13) Effective for a releasee whose crime was committed on					
157	or after October 1, 2014, in violation of chapter 794, s.					
158	800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, in addition					
159	to any other provision of this section, the commission must					
160	impose a condition prohibiting the releasee from viewing,					
161	accessing, owning, or possessing any obscene, pornographic, or					
162	sexually stimulating visual or auditory material unless					
163	otherwise indicated in the treatment plan provided by a					
164	qualified practitioner in the sexual offender treatment program.					
165	Visual or auditory material includes, but is not limited to,					
166	telephones, electronic media, computer programs, and computer					
167	services.					
168	Section 5. Subsection (5) is added to section 948.30,					
169	Florida Statutes, to read:					
170	948.30 Additional terms and conditions of probation or					
171	community control for certain sex offensesConditions imposed					
172	pursuant to this section do not require oral pronouncement at					
I						

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586-01755-14 2014182c1 173 the time of sentencing and shall be considered standard 174 conditions of probation or community control for offenders 175 specified in this section. 176 (5) Effective for a probationer or community controllee 177 whose crime was committed on or after October 1, 2014, and who 178 is placed on probation or community control for a violation of 179 chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 180 847.0145, in addition to all other conditions imposed, the court 181 must impose a condition prohibiting the probationer or community controllee from viewing, accessing, owning, or possessing any 182 183 obscene, pornographic, or sexually stimulating visual or 184 auditory material unless otherwise indicated in the treatment 185 plan provided by a qualified practitioner in the sexual offender 186 treatment program. Visual or auditory material includes, but is 187 not limited to, telephones, electronic media, computer programs, 188 and computer services.

189 Section 6. For the purpose of incorporating the amendment 190 made by this act to section 827.071, Florida Statutes, in 191 references thereto, subsection (2) of section 794.0115, Florida 192 Statutes, is reenacted to read:

193 794.0115 Dangerous sexual felony offender; mandatory 194 sentencing.-

195 (2) Any person who is convicted of a violation of s. 196 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s. 197 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or 198 (4); or s. 847.0145; or of any similar offense under a former 199 designation, which offense the person committed when he or she 200 was 18 years of age or older, and the person: 201

(a) Caused serious personal injury to the victim as a

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586-01755-14 2014182c1 202 result of the commission of the offense; (b) Used or threatened to use a deadly weapon during the 203 204 commission of the offense; 205 (c) Victimized more than one person during the course of 206 the criminal episode applicable to the offense; 207 (d) Committed the offense while under the jurisdiction of a 208 court for a felony offense under the laws of this state, for an 209 offense that is a felony in another jurisdiction, or for an 210 offense that would be a felony if that offense were committed in 211 this state; or 212 (e) Has previously been convicted of a violation of s. 213 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s. 214 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or 215 (4); s. 847.0145; of any offense under a former statutory designation which is similar in elements to an offense described 216 217 in this paragraph; or of any offense that is a felony in another 218 jurisdiction, or would be a felony if that offense were committed in this state, and which is similar in elements to an 219 220 offense described in this paragraph, 221 222 is a dangerous sexual felony offender, who must be sentenced to

a mandatory minimum term of 25 years imprisonment up to, and including, life imprisonment.

225

Section 7. This act shall take effect October 1, 2014.

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The Florida Senate BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.) Prepared By: The Professional Staff of the Committee on Judiciary **CS/SB** 188 BILL: Education Committee and Senator Hukill and others INTRODUCER: **Education Data Privacy** SUBJECT: March 3, 2014 DATE: **REVISED:** ANALYST STAFF DIRECTOR REFERENCE ACTION 1. Hand Klebacha ED Fav/CS 2. Erickson CJ Cannon Favorable 3. Davis Cibula JU **Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 188 implements changes proposed by the Florida Department of Education (DOE) in its report on *Student Data Privacy Recommendations*. The bill contains provisions to make students and their parents aware of their educational privacy rights. The bill also prohibits the collection and limits the dissemination of certain types of information and requires the replacement of social security numbers with student identification numbers. The bill applies to K-12 schools and agencies that provide administrative control or direction or perform services for them. The bill:

- Specifies that students and their parents must be notified annually about their rights regarding education records;
- Clarifies existing law to authorize that attorney fees and court costs be awarded upon receipt of injunctive relief, rather than when the parent or student's rights are "vindicated";
- Prohibits certain agencies or institutions from collecting or retaining information regarding the political affiliation, voting history, religious affiliation, or biometric information of a student, parent, or sibling of a student and defines biometric information;
- Prohibits the disclosure of confidential and exempt education records unless the disclosure is authorized by law;
- Requires governing boards, in a public meeting, to identify which student education records the board intends to include as publicly available student directory information; and
- Requires DOE to establish a process for assigning a non-social security number as a Florida student identification number, and once DOE completes the process, a school district may

not use social security numbers as student identification numbers in its management information systems.

II. Present Situation:

Privacy of Student Education Records

The privacy of student education records is established by a comprehensive system of federal and state laws. This system safeguards the privacy of student education records and ensures that the records are accessible by students and their parents at the public school district, college, university, and state levels.

The Family Educational Rights and Privacy Act (FERPA) is a federal law that applies to all educational agencies or institutions that receive program funds from the United States Department of Education (U.S. DOE).¹ Congress enacted FERPA in 1974 by using its spending power and tied the receipt of federal funds to compliance with certain access and disclosure requirements.² FERPA's purpose is two-fold: to ensure that students and parents can access the student's education records,³ and to protect their privacy rights by limiting the transferability of the student's education records without student or parent consent.⁴ Compliance with FERPA is a mandatory condition for receiving federal funds.⁵

The federal law ensures that public school districts, colleges, universities, and state educational agencies protect student or parent rights and do not disclose student education records without student or parent consent, unless authorized by FERPA.

Florida has codified FERPA in state law. Additionally, as explained in this analysis, Florida has also generally used state law to build upon and strengthen FERPA's provisions.⁶

system." Id.

¹ 20 U.S.C. s. 1232(g) and 34 C.F.R. s. 99.1.

² Gonzaga University v. Doe, 536 U.S. 273, 278 (2002).

³ The phrase "student education records," as used here, encompasses two intertwined categories of student information – "education records" and "personally identifiable information." FERPA prohibits funds from being made available under any applicable program to any educational agency or institution (i.e., any public or private agency or institution that is the recipient of funds under any applicable program) that has a policy or practice of: (1) "permitting the release of education records (or personally identifiable information contained therein...);" or (2) "releasing or providing access to, any personally identifiable information in education records..." unless otherwise permitted by FERPA. 20 U.S.C. ss. 1232g(b)(1) & (2). The term "education records" means those records, files, documents, and other materials which contain information directly related to a student, and are maintained by an educational agency or institution. 20 U.S.C. s. 1232g(a)(4) and *Owasso Independent School Dist. v. Falvo*, 534 U.S. 426 (2002) (FERPA implies that education records are institutional records kept by a single central custodian). "Personally identifiable information" is essentially information that would allow a reasonable person in the school community to identify the student with reasonable certainty. *See* 34 C.F.R. s. 99.3. ⁴ 73 Fed. Reg. 74831 (December 9, 2008). "As such, FERPA is not an open records statute or part of an open records

⁵ 20 U.S.C. s. 1232g(a)(1) and 34 C.F.R. s. 99.67.

⁶ Section 1002.221, F.S. Florida law states that a student's education records, as defined in FERPA and the federal regulations issued pursuant thereto, are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, Fla. Const. *See* ss 1002.221(1) and 1006.52(1), F.S. In light of FERPA and the federal regulations and preamble issued thereto (see footnote 3), Florida's public record exemption encompasses both "education records" (i.e., institutional records) and the subset of "personally identifiable information" (i.e., information that identifies a student, regardless of format). *See* 20 U.S.C. s. 1232g, 34 C.F.R. part 99, and ss. 1002.221 and 1006.52, F.S.

Parent or Student Rights

The federal law obligates school districts, colleges, universities, and state educational agencies to ensure that students or parents enjoy their rights to:

- Inspect, review, and contest the student's educational records;⁷ and
- Authorize the disclosure of student education records by written consent.⁸

Florida law codifies FERPA into state law, further ensuring the responsibility of school districts, colleges, universities, and state educational agencies to guard these student and parent rights.⁹ However, there are differences between FERPA and state law. For example:

- The federal law requires school districts, colleges, and universities to annually notify students or parents of their rights pertaining to educational records.¹⁰ Florida law does not specifically identify how frequently the notice is to be provided to students or parents.¹¹
- The federal law allows a parent or student to file a written complaint with U.S. DOE, but does not explicitly authorize students or parents to file a lawsuit to protect their rights.¹² Florida law authorizes a student or parent to file a lawsuit seeking an injunction to protect his or her rights. Additionally, Florida law allows attorney fees and court costs to be awarded if the rights "are vindicated."¹³

Authorized Disclosure of Student Education Records

The federal law authorizes school districts, colleges, and universities¹⁴ to disclose student education records¹⁵ without the consent of the student or parent if the disclosure meets limited conditions.¹⁶ Examples of conditions include, but are not limited to, disclosure of student education records to:

- Other school officials within the school or school district determined to have a legitimate educational interest;¹⁷
- Schools to which a student is transferring;¹⁸

⁷ 34 C.F.R. s. 99.5, 34 C.F.R. s. 99.10, 34 C.F.R. s. 99.12, and 34 C.F.R. ss. 99.20-99.22.

⁸ 34 C.F.R. s. 99.30.

⁹ Section 1002.22(2), F.S.

¹⁰ 20 U.S.C. s. 1232g(e) and 34 C.FR. s. 99.7.

¹¹ Section 1002.22(2)(e), F.S.

¹² 34 C.F.R. s. 99.63 (*see* 34 C.F.R. ss. 99.60-99.67 for the enforcement procedures in general). Enforcement action may include withholding payments or terminating program eligibility. 34 C.F.R. s. 99.67(a) and *Gonzaga University v. Doe*, 536 U.S. 273, 290 (2002).

¹³ Section 1002.22(4), F.S.

¹⁴ FERPA uses the term "educational agencies or institutions," which refers to local education agencies (i.e., school districts), elementary and secondary schools, postsecondary institutions (i.e., colleges and universities), and schools operated by the United States Department of Interior Bureau of Indian Education. 76 F.R. 75606 (December 2, 2011). The term does not generally include a state education agency (i.e., the Florida Department of Education). *Id.*

¹⁵ "Education records" means those records that are directly related to a student, and maintained by an educational agency or institution or by a party acting for the educational agency or institution. 34 C.F.R. s. 99.3.

¹⁶ 20 U.S.C. s. 1232g(b)(1) and (2) and 34 C.F.R. s. 99.30(a).

¹⁷ 20 U.S.C. s. 1232g(b)(1)(A) and 34 C.F.R. s. 99.31(a)(1)(i)(A).

¹⁸ 20 U.S.C. s. 1232g(b)(1)(B) and 34 C.F.R. s. 99.31(a)(2).

- A contractor, consultant, or other party to whom an agency has outsourced institutional services or functions;¹⁹ and
- Organizations conducting studies for, or on behalf of, school districts, colleges, or universities to: develop, validate or administer predictive tests; administer student aid programs; or improve instruction.²⁰

Florida law provides that student education records are confidential and exempt from disclosure, and may not be released without student or parent consent, except as permitted by FERPA.²¹

For each student who attends a public school in Florida, the student's education records are created by the school or school district.²² Thus, the student's education records may initially be disclosed by the school district (as authorized by FERPA and state law) to a state educational agency—which in Florida is generally the Florida Department of Education (DOE). DOE, as authorized by FERPA and state law, may "redisclose" student education records in the same manner that an initial disclosure is authorized.²³

Biometric Information

The Florida K-20 Education Code is silent on the issue of whether biometric information may be collected from students. Federal law, in contrast, permits the collection of biometric information and states that "personally identifiable information" includes a student's "biometric record."²⁴

Directory Information

Federal law provides that "directory information" is "information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed."²⁵ Examples of directory information are: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, e-mail address, photograph, date and place of birth, grade level, dates of attendance, and participation in sports.²⁶ Directory information does not include a student's social security number.²⁷

Under FERPA school districts, colleges, and universities are authorized to disclose directory information if they give public notice to students or parents of the types of student information that is being designated as directory information.²⁸ Because directory information constitutes a

¹⁹ 20 U.S.C. s. 1232g(b)(1) and 34 C.F.R. s. 99.30(a)(1)(i)(B).

²⁰ 20 U.S.C. s. 1232g(b)(1)(F) and 34 C.F.R. s. 99.31(a)(6).

²¹ Section 1002.221(1), F.S.; s. 1006.52(1), F.S. Florida law defines a student's education records "as defined" in FERPA. *Id.* ²² 76 Fed. Reg. 75606 (December 2, 2011). The definition of "student" means any individual who is or has been in attendance at an educational agency or institution and recording whom the agency or institution meintains education records. ²⁴ C F P

at an educational agency or institution and regarding whom the agency or institution maintains education records. 34 C.F.R. s. 99.3.

²³ 34 C.F.R. s. 99.33.

²⁴ 34 C.F.R. s. 99.3 provides that "*Biometric record*, as used in the definition of *personally identifiable information*, means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting."

²⁵ 34 C.F.R. s. 99.3.

²⁶ 20 U.S.C. s. 1232g(a)(5)(A) and 34 C.F.R. s. 99.3.

²⁷ 34 C.F.R. s. 99.3.

²⁸ 34 C.F.R. s. 99.37. This notice includes the ability to opt-out of being included in the student directory. *Id.*

permissible disclosure of student education records without student or parent consent,²⁹ Florida's codification of FERPA into statute also incorporates these requirements.³⁰

Social Security Numbers

Federal law does not prohibit the use of a student's social security number as a personal identifier or as a way to connect students to their records.³¹ However, according to the U.S. DOE, best practices dictate that states should limit use of student social security numbers to instances in which there is no feasible alternative.³²

Florida law requires school districts to request and use social security numbers as student identification numbers in the school district's management information system.³³

Florida Department of Education Legislative Recommendations

On September 23, 2013, after the Governor's Education Summit, Governor Scott issued Executive Order Number 13-276. The executive order directed the Commissioner of Education to "immediately conduct a student data security review" and to "make recommendations regarding any needed rule or legislative change to safeguard the privacy of our students' data...."³⁴

The Department of Education subsequently issued a report covering security initiatives, school district activities, and information technology security reviews.³⁵ The report contained various recommendations, including recommendations that the Legislature:

- Require that school districts give annual notice to students and parents of their rights regarding education records;
- Clarify that a student or parent who has received injunctive relief to enforce his or her rights may be awarded attorney fees and court costs;
- Establish limitations on the collection of student information by certain entities that are part of, or perform services for, Florida's public education system. The limitations would prohibit the collection, obtainment, or retention of: biometric information; political affiliation; voting history; religious affiliation; health information; and correspondence from community agencies or private professionals;
- Establish limitations on the disclosure of confidential and exempt student education records for entities that are part of, or perform services for, Florida's public education system, except

²⁹ 20 U.S.C. s. 1232g(a)(5); 34 C.F.R. s. 99.31(11); 34 C.F.R. s. 99.37.

³⁰ Sections 1002.221, and 1006.52, F.S.

³¹ 76 Fed. Reg. 75611 (December 2, 2011). However, the U.S. Department of Education recognizes the importance of limiting social security number use, as FERPA prohibits schools from designating student social security numbers as directory information. 34 C.FR. s. 99.3 and 76 Fed. Reg. s. 75611 (December 2, 2011) (referring to the definition of "directory information").

³² 76 Fed. Reg. s. 75611 (December 2, 2011).

³³ Section 1008.386, F.S. However, it appears that a student is not required to provide his or her social security number as a condition for enrollment or graduation. *Id.*

³⁴ Executive Order No. 13-276, dated September 23, 2013.

³⁵ Florida Department of Education, Student Data Privacy Recommendations, available at

http://www.fldoe.org/pdf/DataSecurityReport.pdf (last viewed on February 24, 2014).

when the disclosure is authorized by state or federal law, or in response to a lawfully issued subpoena or court order;

- Require directory information to be designated in accordance with FERPA at regularly scheduled governing board meetings, and requires that the governing board consider the extent to which the disclosure would put students at risk; and
- Establish a computer generated student identifier for state and local systems to protect the confidentiality of student records.³⁶

In summary, the DOE report identifies areas where state law could be strengthened to further ensure that public school districts, colleges, universities, and state educational agencies protect student or parent rights and the privacy of student education records.

III. Effect of Proposed Changes:

This bill contains provisions to make students and their parents aware of their educational privacy rights. The bill also prohibits the collection and limits the dissemination of certain types of information and requires the replacement of social security numbers with student identification numbers. The bill applies to K-12 schools and agencies that provide administrative control or direction of, or perform services for, them.

The bill implements changes proposed by DOE in its *Student Data Privacy Recommendations*. The bill:

- Specifies that students and their parents must be notified annually about their rights regarding education records, which corresponds with the federal Family Educational Rights and Privacy Act's annual notice requirement;
- Clarifies existing law to authorize the payment of attorney fees and court costs to a parent or student who is granted injunctive relief in a suit to enforce his or her education record rights, rather than when the parent or student's rights are "vindicated";
- Prohibits educational agencies or institutions related to K-12 schools from collecting, obtaining, or retaining information regarding the political affiliation, voting history, religious affiliation, or biometric information of a student, parent, or sibling of the student;
- Defines biometric information as "information collected from the electronic measurement or evaluation of any physical or behavioral characteristics that are attributable to a single person" and gives examples such as fingerprint, hand, eye, vocal, or other physical characteristics used for electronic identification;
- Prohibits the disclosure of confidential and exempt student education records to a person, public body, body politic, political subdivision, or agency of the Federal Government unless authorized by a specified law or in response to a lawfully issued subpoena or court order;
- Creates new obligations in law to require the governing board of a school district, college, or university, in a regularly scheduled public meeting, to identify which student information the governing board will designate as publicly available directory information, and to consider whether the disclosure of the identified directory information would put students at risk;

³⁶ Id.

- Confirms the ability of the school district, college, or university, to charge fees for providing copies of directory information in response to public records requests;
- Deletes the requirement in state law that school districts use student social security numbers as student identification numbers; and
- Requires DOE to establish a process for assigning a non-social security number as a Florida student identification number, and once DOE completes the process, a school district may not use social security numbers as student identification numbers in its management information systems.

The bill takes 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to DOE, existing federal and state funds are adequate to provide for the development of the student identification number process.

VI. Technical Deficiencies:

Section 3 of the bill, which requires DOE to establish a process for assigning Florida student identification numbers, does not require DOE to begin or complete the process by a specific date. The Legislature might want to set a date for implementation of this provision.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.22, 1008.386, and 1011.622. This bill creates section 1002.222, Florida Statutes.

IX. Additional Information:

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

CS by Education on February 4, 2014

CS/SB 188 differs from SB 188 in that:

- SB 188 provided that school districts that wanted to collect student biometric information must: (1) create policies governing the collection and use of the biometric information; and (2) not collect biometric information on a student unless the parent chose to opt-in. CS/SB 188 reframes and expands the concepts in SB 188 to prohibit entities that are part of, or perform services for, Florida's public education system, from collecting, obtaining, and retaining the biometric information, political affiliation, voting history, and religious affiliation of a student, parent, or sibling of the student; and
- CS/SB 188 implements recommendations from the DOE Student Data Privacy report.
- B. Amendments:

None.

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

232956

LEGISLATIVE ACTION

• • •

Senate

House

The Committee on Judiciary (Latvala) recommended the following:			
Senate Amendment (with title amendment)			
Between lines 118 and 119			
insert:			
(3) Notwithstanding the provisions of this section, a			
school district that used a palm scanner system for breakfast			
and lunch programs on March 1, 2014, may continue to use the			
system upon approval of the Commissioner of Education. The			
commissioner may approve the continued use of the system once			
assured that the confidential student records are adequately			

11 protected.

1 2 3

12	(4) The State Board of Education may adopt rules to		
13			
14	======================================		
15	And the title is amended as follows:		
16	Delete line 16		
17	and insert:		
18	assigning student identification numbers; authorizing		
19	a school district to continue use of a palm scanner		
20	system upon approval by the Commissioner of Education;		
21	authorizing the State Board of Education to adopt		
22	rules; amending s.		
23			

CS for SB 188

By the Committee on Education; and Senators Hukill, Negron, Bradley, Simpson, Flores, Brandes, and Stargel

	581-01636-14 2014188c1	
1	A bill to be entitled	
2	An act relating to education data privacy; amending s.	
3	1002.22, F.S.; providing for annual notice to K-12	
4	students and parents of rights relating to education	
5	records; revising provisions relating to remedy in	
6	circuit court with respect to education records and	
7	reports of students and parents; creating s. 1002.222,	
8	F.S.; providing limitations on the collection of	
9	information and the disclosure of confidential and	
10	exempt student records; defining the term "biometric	
11	information"; authorizing fees; amending s. 1008.386,	
12	F.S.; revising provisions relating to the submission	
13	of student social security numbers and the assignment	
14	of student identification numbers; requiring the	
15	Department of Education to establish a process for	
16	assigning student identification numbers; amending s.	
17	1011.622, F.S.; conforming provisions; providing an	
18	effective date.	
19		
20	Be It Enacted by the Legislature of the State of Florida:	
21		
22	Section 1. Paragraph (e) of subsection (2) and subsection	
23	(4) of section 1002.22, Florida Statutes, are amended to read:	
24	1002.22 Education records and reports of K-12 students;	
25	rights of parents and students; notification; penalty	
26	(2) RIGHTS OF STUDENTS AND PARENTS.—The rights of students	
27	and their parents with respect to education records created,	
28	maintained, or used by public educational institutions and	
29	agencies shall be protected in accordance with the Family	

Page 1 of 5

CS for SB 188

	581-01636-14 2014188c1			
30	Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g,			
31	the implementing regulations issued pursuant thereto, and this			
32	section. In order to maintain the eligibility of public			
33	educational institutions and agencies to receive federal funds			
34	and participate in federal programs, the State Board of			
35	Education shall comply with the FERPA after the board has			
36	evaluated and determined that the FERPA is consistent with the			
37	following principles:			
38	(e) Students and their parents shall receive <u>annual</u> notice			
39	of their rights with respect to education records.			
40	(4) PENALTYIf any official or employee of an institution			
41	refuses to comply with this section, the aggrieved parent or			
42	student has an immediate right to bring an action in circuit			
43	court to enforce his or her rights by injunction. Any aggrieved			
44	parent or student who <u>receives injunctive relief</u> brings such			
45	action and whose rights are vindicated may be awarded <u>attorney</u>			
46	attorney's fees and court costs.			
47	Section 2. Section 1002.222, Florida Statutes, is created			
48	to read:			
49	1002.222 Limitations on collection of information and			
50	disclosure of confidential and exempt student records			
51	(1) An agency or institution as defined in s. 1002.22(1)			
52	may not:			
53	(a) Collect, obtain, or retain information on the political			
54	affiliation, voting history, religious affiliation, or biometric			
55	information of a student or a parent or sibling of the student.			
56	For purposes of this subsection, the term "biometric			
57	information" means information collected from the electronic			
58	measurement or evaluation of any physical or behavioral			
	Page 2 of 5			

	581-01636-14 2014188c1		
59	characteristics that are attributable to a single person,		
60	including fingerprint characteristics, hand characteristics, eye		
61	characteristics, vocal characteristics, and any other physical		
62	characteristics used for the purpose of electronically		
63	identifying that person with a high degree of certainty.		
64	Examples of biometric information include, but are not limited		
65	to, a fingerprint or hand scan, a retina or iris scan, a voice		
66	print, or a facial geometry scan.		
67	(b) Provide education records made confidential and exempt		
68	by s. 1002.221 or federal law to:		
69	1. A person as defined in s. 1.01(3) except when authorized		
70	by s. 1002.221 or in response to a lawfully issued subpoena or		
71	court order;		
72	2. A public body, body politic, or political subdivision as		
73	defined in s. 1.01(8) except when authorized by s. 1002.221 or		
74	in response to a lawfully issued subpoena or court order; or		
75	3. An agency of the Federal Government except when		
76	authorized by s. 1002.221, required by federal law, or in		
77	response to a lawfully issued subpoena or court order.		
78	(2) The governing board of an agency or institution may		
79	only designate information as directory information in		
80	accordance with 20 U.S.C. s. 1232g and applicable federal		
81	regulations. Such designation must occur at a regularly		
82	scheduled meeting of the governing board. The governing board of		
83	an agency or institution must consider whether designation of		
84	such information would put students at risk of becoming targets		
85	of marketing campaigns, the media, or criminal acts. An agency		
86	or institution may charge fees for copies of designated		
87	directory information as provided in s. 119.07(4).		

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581-01636-14 2014188c1 88 Section 3. Section 1008.386, Florida Statutes, is amended 89 to read: 1008.386 Florida Social security numbers used as student 90 91 identification numbers.-92 (1) When a student enrolls in a public school in this 93 state, the Each district school board shall request that the 94 each student enrolled in a public school in this state provide 95 his or her social security number and shall indicate whether the student identification number assigned to the student is a 96 97 social security number. A student satisfies this requirement by 98 presenting his or her social security card or a copy of the card 99 to a school enrollment official. Each school district shall use 100 social security numbers as student identification numbers in the 101 management information system maintained by the school district. 102 However, a student is not required to provide his or her social 103 security number as a condition for enrollment or graduation. A 104 student satisfies this requirement by presenting to school 105 enrollment officials his or her social security card or a copy 106 of the card. The school district shall include the social 107 security number in the student's permanent records and shall 108 indicate if the student identification number is not a social 109 security number. The Commissioner of Education shall assist 110 provide assistance to school districts with to assure that the 111 assignment of student identification numbers other than social 112 security numbers is kept to a minimum and to avoid duplication 113 of any student identification number. 114 (2) The department shall establish a process for assigning 115 a Florida student identification number to each student in the 116 state, at which time a school district may not use social

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

CS for SB 188

581-01636-14 2014188c1 117 security numbers as student identification numbers in its 118 management information systems. 119 (3) The State Board of Education may adopt rules to 120 implement this section. 121 Section 4. Section 1011.622, Florida Statutes, is amended 122 to read: 123 1011.622 Adjustments for students without a Florida common 124 student identification number identifier.-The Florida Education 125 Finance Program funding calculations, including the calculations 126 authorized in ss. 1011.62, 1011.67, 1011.68, and 1011.685, shall 127 include funding for a student only when all of the student's 128 records are reported to the Department of Education under a 129 Florida common student identification number identifier. The 130 State Board of Education may adopt rules pursuant to ss. 131 120.536(1) and 120.54 to implement this section. 132 Section 5. This act shall take effect upon becoming a law.

Page 5 of 5

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 Committee on Judiciary **CS/SB 532** BILL: Criminal Justice Committee and Senator Simmons INTRODUCER: **Disclosure of Sexually Explicit Images** SUBJECT: March 3, 2014 DATE: **REVISED:** ANALYST STAFF DIRECTOR REFERENCE ACTION 1. Sumner Cannon CJ Fav/CS JU 2. Brown Cibula **Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 532 creates the new criminal offense of electronic disclosure of sexually explicit images.

The bill makes it a second degree misdemeanor to attempt to harass another person by disclosing a sexually explicit image of that person without his or her consent to a social networking service or website or by means of another electronic medium.

The bill makes the conduct a first degree misdemeanor if the offender is at least 18 years old and the victim is younger than 16 years old at the time of the offense.

The new offense is added to the list of offenses for which a court must issue a no-contact order to a defendant, which prohibits the defendant from having contact with the victim at the time of sentencing for the duration of the sentence imposed.

II. Present Situation:

Revenge Porn

Publishing a nude or semi-nude photograph or video on the Internet which was originally intended to be kept private between two people has become known as "revenge porn." In many cases, the embarrassing photos or videos are posted on a website that is specifically designed to

provide a forum for this activity. These websites generally do not create their own content, but allow persons to post content to the site after the person agrees to certain terms and conditions.¹

Section 230 of the Communications Decency Act of 1996 protects website hosts from being considered the publisher or speaker of material posted by third parties provided that the material is not illegal, such as child pornography.²

Florida law does not specifically prohibit posting pictures of a nude adult person on the Internet for viewing by other adults if the picture was taken with the knowledge and consent of the person. In limited circumstances, victims may seek relief through prosecution under the offense of stalking if they can prove cyberstalking (s. 784.048, F.S.), or extortion (s. 836.05, F.S.). Posting a picture that depicts nudity of a child may be punished as a second-degree felony or a third-degree felony under chs. 827 (Abuse of Children) or 847 (Obscenity), F.S. Section 817.568(4), F.S., makes it a first degree misdemeanor for a person without consent to use another person's personal identification information to harass that person.³ However, victims of unauthorized web postings typically have no recourse in the state.

New Jersey was the first state to respond to "revenge porn" with legislation in 2004. The New Jersey Legislature made it a felony for any person to knowingly disclose or cause the disclosure⁴ of any photograph or video recording of himself or herself engaging in sexual activity with another person without the express consent of the other person.⁵ California also passed legislation in 2013 making acts of revenge porn a misdemeanor.⁶ As of January 20, 2014, bills regulating revenge porn were pending in 9 states other than Florida for the 2014 Legislative Session.⁷

⁶ CAL PENAL CODE § 647 (4)(A)-(C).

¹ The website host typically derives profit from advertising revenue and, in some cases, from charging a fee to remove the offending material.

² The relevant portion of the Act provides: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. 230(c)(1).

³ Section 817.568(1)(f), F.S., defines "personal identification information" as "any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including ... name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, governmental passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer; ... unique biometric data; ... unique electronic identification number; ... medical records; ... telecommunication identifying information or access device; or other number or information that can be used to access a person' financial resources."

⁴ Disclose is defined to mean sell, manufacture, give, provide, lend trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer. N.J. STAT. ANN. § 2C:14-9(2004).

⁵ Id.

⁷ States considering legislation on revenge porn include: Colorado, Hawaii, Kentucky, Maryland, Missouri, New York, Utah, Washington, and Wisconsin. Email correspondence between Florida Senate Criminal Justice committee staff and Pam Greenberg, with the National Conference of State Legislatures (NCSL) (February 25, 2014); on file with the Senate Judiciary Committee; *Utah House Passes 'Revenge Porn'* bill, online at http://www.standard.net/stories/2014/02/14/utah-house-passes-revenge-porn-bill (last visited February 14, 2014). *See also*, Cynthia J. Najdowski, PhD and Meagen M. Hildegrand, *The Criminalization of Revenge Porn*, Vol. 45, Journal of the American Psychological Association 1, 26 (January 2014).

Criminal Penalties

A second degree misdemeanor is punishable by up to 60 days in jail and up to a \$500 fine. A first degree misdemeanor is punishable by up to a year in jail and up to a \$1,000 fine.⁸

No Contact Orders

In addition to authority provided to the court to prevent an offender from having contact with a victim, s. 921.244, F.S., specifically requires the court to enter an order of no contact when an offender has committed:

- Sexual battery (s. 794.011, F.S.);
- A lewd or lascivious offense on a victim under the age of 16 (s. 800.04, F.S.);
- Specific acts of computer pornography when the offender knows or should know that a victim under the age of 16 has viewed the transmission (s. 847.0135(5), F.S.); or
- An offense for which the offender qualifies for sentencing as a violent career criminal, a habitual felony offender, a habitual violent felony offender, or a three-time violent felony offender (s. 775.084, F.S.).

III. Effect of Proposed Changes:

The bill creates s. 847.0136, F.S., to specifically address the non-consensual transmission or posting of sexually explicit images to social networking services or a website, or by means of any other electronic medium. Currently, it may be possible to prosecute such behavior under s. 817.568(4), F.S., as a first degree misdemeanor for harassment by use of personal identification information. If supported by additional facts, such actions might also be prosecuted as a felony if it includes the elements of crimes such as stalking (s. 784.048, F.S.), extortion (s. 836.05, F.S.), or an offense against a child under chs. 827 or 847, F.S.

Under the bill, a person may not disclose a sexually explicit image⁹ of an identifiable person¹⁰ to a social networking website or by means of another electronic medium if the disclosure is:

- Made without the person's consent;
- Knowing and intentional; and
- Made with the intent to harass the person.

A person who makes the disclosure commits a second degree misdemeanor. The bill enhances the conduct to a first degree misdemeanor if the offender was 18 years or older and the victim was younger than 16 years of age. The bill also provides that a violation is considered to take

⁸ Sections 775.082(4)(a) and (b) and 775.083(1)(d) and (e), F.S.

⁹ "Sexually explicit image" is defined in the bill as a private photograph, film videotape, recording or other reproduction of nudity or sexual intercourse, including but not limited to, oral or anal sexual intercourse.

¹⁰ "Identifiable person" is defined in the bill as an individual in a sexually explicit image who can be identified through visual recognition of any part of his or her body depicted in the image or identifying information as defined in s. 397.311(13), F.S. (name, address, social security number, fingerprints, photograph, and other similar information) which accompanies or is associated with the image.

place in this state if any conduct that is an element of the offense or any harm to the identifiable person resulting from the offense occurs within this state.

The bill also adds the new offense to the list of offenses for which a court must issue a nocontact order to a defendant pursuant to s. 921.244, F.S.

The bill does not apply to disclosures of sexually explicit images for:

- Reporting, investigation, and prosecution of an alleged crime for law enforcement purposes; or
- Voluntary and consensual purposes in public or commercial settings.

The bill takes effect October 1, 2014.

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:

To date, no First Amendment challenges to statutes prohibiting the conduct of "revenge porn" have been made at the appellate level. Should this bill become law, the potential exists for a First Amendment challenge. However, appellate courts have upheld the prosecution of individuals under anti-harassment and anti-stalking laws for distributing sexually explicit images or sending harassing messages.¹¹ Additionally, the United States Supreme Court has ruled that the First Amendment does not attach to the dissemination of child pornography.¹² As such, a defendant would not be successful in asserting a first amendment challenge for disseminating sexually explicit images of children.

¹¹ A court upheld an anti-stalking act's anti-harassment provision in the prosecution of a defendant who distributed a sex video of the victim in addition to other prohibited conduct (*State v. Bradford*, 175 Wash.App. 912, 917 (2013)). A court upheld an anti-stalking statute on the basis that the statute regulated conduct, not speech, and prosecution was proper of a defendant who established a pattern of engaging in intimidating text messages, phone calls, and emails to the victim. Here, the court held "Such intimidating conduct serves no legitimate purpose and merits no First Amendment protection." (*State v. Hemingway*, Wis.2d 297, 304-305, 310 (2012)).

¹² New York v. Ferber, 458 U.S. 747, 756-757 (1982). In *Ferber*, the court upheld as legitimate the state interest in protecting the physical and psychological well-being of children. *Id.* at 756, 761.

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V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) provides the final, official estimate of the prison bed impact, if any, of legislation. The CJIC has not yet reviewed this bill but it has reviewed the similar bill, HB 475. CJIC found that HB 475 will have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends section 921.0042 of the Florida Statutes. The bill creates section 847.0136 of the Florida Statutes.

IX. 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 17, 2014:

The CS changes the penalty from a third degree felony to a second degree misdemeanor for intentionally and knowingly disclosing sexually explicit images of a person to a social networking service or a website, or by means of any other electronic medium with the intent to harass the person.

The CS changes the penalty from a second degree felony to a first degree misdemeanor if the offender was 18 years of age or older and the victim was younger than 16 years of age.

B. Amendments:

None.

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

LEGISLATIVE ACTION

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Senate

House

The Committee on Judiciary (Gardiner) recommended the following:		
Senate Amendment (with title amendment)		
Between lines 69 and 70		
insert:		
(6) This section does not impose liability on any provider		
of an interactive computer service, as defined in 47 U.S.C. s.		
230(f); of an information service, as defined in 47 U.S.C. s.		
153; or of communications services, as defined in s. 202.11,		
for:		
(a) The transmission, storage, or caching of electronic		
communications or messages of other persons;		

12	(b) Other related telecommunications or commercial mobile		
13	radio service; or		
14	(c) Content provided by another person.		
15			
16	========= T I T L E A M E N D M E N T =================================		
17	And the title is amended as follows:		
18	Delete line 16		
19	and insert:		
20	a violation of s. 847.0136, F.S.; providing		
21	applicability; providing an		

CS for SB 532

By the Committee on Criminal Justice; and Senator Simmons

	591-01846-14 2014532c1	
1	A bill to be entitled	
2	An act relating to the disclosure of sexually explicit	
3	images; creating s. 847.0136, F.S.; providing	
4	definitions; prohibiting an individual from disclosing	
5	a sexually explicit image of an identifiable person	
6	with the intent to harass such person if the	
7	individual knows or should have known such person did	
8	not consent to the disclosure; providing criminal	
9	penalties; providing for jurisdiction; providing	
10	exceptions; amending s. 921.244, F.S.; requiring a	
11	court to order that a person convicted of such offense	
12	be prohibited from having contact with the victim;	
13	providing criminal penalties for a violation of such	
14	order; providing that criminal penalties for certain	
15		
16	a violation of s. 847.0136, F.S.; providing an	
17	effective date.	
18		
19	Be It Enacted by the Legislature of the State of Florida:	
20		
21	Section 1. Section 847.0136, Florida Statutes, is created	
22	to read:	
23	8 847.0136 Prohibited electronic disclosure of sexually	
24	4 explicit images; penalties; jurisdiction	
25	(1) As used in this section, the term:	
26	(a) "Disclose" means to publish, post, distribute, exhibit,	
27	advertise, offer, or transfer, or cause to be published, posted,	
28	distributed, exhibited, advertised, offered, or transferred.	
29	(b) "Harass" means to engage in conduct directed at a	

Page 1 of 4

591-01846-14 2014532c1 30 specific person which causes substantial emotional distress to 31 that person and serves no legitimate purpose. 32 (c) "Identifiable person" means an individual in a sexually 33 explicit image who can be identified through: 34 1. Visual recognition of any part of his or her body 35 depicted in the sexually explicit image; or 36 2. Identifying information as defined in s. 397.311 which 37 accompanies or is associated with the sexually explicit image. 38 (d) "Sexually explicit image" means a private photograph, 39 film, videotape, recording, or other reproduction of: 40 1. Nudity; or 41 2. Sexual intercourse, including, but not limited to, oral sexual intercourse or anal sexual intercourse. 42 43 (2) An individual may not intentionally and knowingly disclose a sexually explicit image of an identifiable person to 44 45 a social networking service or a website, or by means of any other electronic medium, with the intent to harass such person, 46 47 if the individual knows or should have known that the person 48 depicted in the sexually explicit image did not consent to such 49 disclosure. 50 (3) (a) Except as provided in paragraph (b), an individual 51 who violates this section commits a second degree misdemeanor, 52 punishable as provided in s. 775.082 or s. 775.083. 53 (b) An individual who is 18 years of age or older at the 54 time he or she violates this section commits a first degree 55 misdemeanor, punishable as provided in s. 775.082 or s. 775.083, 56 if the violation involves a sexually explicit image of an 57 individual who was younger than 16 years of age at the time the 58 sexually explicit image was created.

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	591-01846-14 2014532c1			
59	(4) A violation of this section is committed within this			
60	state if any conduct that is an element of the offense described			
61	in subsection (2), or any harm to the identifiable person			
62	resulting from the offense described in subsection (2), occurs			
63	within this state.			
64	(5) This section does not apply to the disclosure of a			
65	sexually explicit image for:			
66	(a) The reporting, investigation, and prosecution of an			
67	alleged crime for law enforcement purposes.			
68	(b) Voluntary and consensual purposes in public or			
69	commercial settings.			
70	Section 2. Section 921.244, Florida Statutes, is amended to			
71	read:			
72	921.244 Order of no contact; penalties			
73	(1) At the time of sentencing an offender convicted of a			
74	violation of s. 794.011, s. 800.04, s. 847.0135(5), <u>s. 847.0136,</u>			
75	or any offense in s. 775.084(1)(b)1.ao., the court shall order			
76	that the offender be prohibited from having any contact with the			
77	victim, directly or indirectly, including through a third			
78	person, for the duration of the sentence imposed. The court may			
79	reconsider the order upon the request of the victim if the			
80	request is made at any time after the victim has attained 18			
81	years of age. In considering the request, the court shall			
82	conduct an evidentiary hearing to determine whether a change of			
83	circumstances has occurred which warrants a change in the court			
84	order prohibiting contact and whether it is in the best interest			
85	of the victim that the court order be modified or rescinded.			
86	(2) <u>An</u> Any offender who violates a court order issued under			
87	this section commits a felony of the third degree, punishable as			

Page 3 of 4

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

CS for SB 532

CS for	SB	532
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ī	591-01846-14 2014532c1
88	provided in s. 775.082, s. 775.083, or s. 775.084.
89	(3) The punishment imposed under this section shall run
90	consecutive to any former sentence imposed for a conviction for
91	any offense under s. 794.011, s. 800.04, s. 847.0135(5), <u>s.</u>
92	<u>847.0136,</u> or any offense in s. 775.084(1)(b)1.ao.
93	Section 3. This act shall take effect October 1, 2014.

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.)

	Pre	pared By: The Professional	Staff of the Commi	ttee on Judiciary
BILL:	CS/SB 634	Ļ		
INTRODUCER:	Children, H	Families, and Elder Affa	irs Committee ar	nd Senator Brandes
SUBJECT:	Guardiansh	nip		
DATE:	March 3, 2	014 REVISED:		
ANAL	YST	STAFF DIRECTOR	REFERENCE	ACTION
1. Crosier		Hendon	CF	Fav/CS
2. Munroe		Cibula	JU	Pre-meeting
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 634 revises expands the authority of judges and clerks of court to oversee guardians and assets held by guardians. For this purpose, the bill:

- Redefines the term "audit" to include various practices that meet professional standards.
- Requires persons, other than corporate guardians, seeking appointment as a guardian, including employees of a professional guardian to submit to a credit history investigation and background screening.
- Authorizes clerks of court to obtain and review records impacting guardianship assets and, upon application to the court, to issue subpoenas to do so.
- Allows a guardian or ward who receives notice and a proposed subpoena to object to a clerk's request for authority from the court to subpoena documents from a third.
- Allows the court to remove a guardian for a failure in bad faith to submit records during a clerk's audit.
- Requires a person seeking a guardianship appointment to acknowledge arrests covered by an expunged or sealed record.

II. Present Situation:

Guardianships serve as a mechanism to protect vulnerable individuals in our society who do not have a family or loved or who is willing and able to manage their property or other personal matters. A guardian may be described as a person "who has the legal authority and duty to care

for another's person or property, esp[ecially] because of the other's infancy, incapacity, or disability."¹ Guardianships are governed completely and exclusively under statutes in Florida.² Any adult may petition a court to initiate guardianship proceedings to determine the incapacity of any person.³ An "incapacitated person" is a "person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person."⁴

A guardian is a surrogate decision-maker appointed by the court to make personal or financial decisions for a minor or an adult having mental or physical disabilities.⁵ Under Florida law, a ward is defined as a person for whom a guardian has been appointed.⁶

The procedure to determine an alleged person's incapacity is prescribed by statute.⁷ Any person may file, under oath, a petition in circuit court for determination of incapacity alleging that a person is incapacitated.⁸ After a petition for determination of incapacity has been filed, a court must appoint an examining committee comprised of three health care professionals to examine and report the condition of the alleged incapacitated person.⁹ If the examining committee determines that the alleged incapacitated person is not incapacitated, the court must dismiss the petition for determination of incapacity.¹⁰ If the examining committee determines that the alleged incapacitated, the court must hold a hearing on the petition. If after a hearing, the court determines that a person is incapacitated, the court must also find that alternatives to guardianship were considered and that no alternatives to guardianship will sufficiently address the problems of the incapacitated person and appoint a guardian.¹¹

Guardians

Upon a finding by the court that a guardianship sufficiently addresses the problem of the incapacitated person, a guardian will be appointed. There are many different types of guardians available for court appointment such as a "limited guardian," "nonprofit guardian," "preneed guardian," and "professional guardian." A "professional guardian," is any guardian who has at any time rendered services to three or more wards as their guardian.¹² A professional guardian must comply with statutory application, bond, and educational requirements. Each professional guardian must allow, at the guardian's expense, an investigation of the guardian's credit history, and the credit history of employees of the guardian, in a manner prescribed by the Department of

- ⁹ Section 744.331(3), F.S.
- ¹⁰ Section 744.331(4), F.S.
- ¹¹ See s. 744.331(6)(b), F.S.

¹ BLACK'S LAW DICTIONARY (9th ed. 2009).

² Poling v. City Bank & Trust Co. of St. Petersburg, 189 So. 2d 176, 182 (Fla 2d DCA 1966).

³ Section 744.3201, F.S.

⁴ Section 744.102(12), F.S.

⁵ See e.g., s. 744.102(9), F.S.

⁶ Section 744.102(22), F.S.

⁷ Section 744.331, F.S.

⁸ *Id.* In Florida, circuit courts have exclusive jurisdiction of proceedings relating to the determination of incompetency. Section 26.12(2)(b), F.S.

¹² Section 744.102(17), F.S.

Elderly Affairs.¹³ Each professional guardian shall allow a level 2 background screening of the guardian and employees of the guardian.¹⁴

Any resident of this state who is *sui juris* (someone with full legal rights or capacity and not under any legal disability or power of another such as guardianship)¹⁵ and is 18 years of age or older is qualified to act as a guardian of the ward.¹⁶ A nonresident of the state may serve as a guardian of a resident if he or she is:

- Related by lineal consanguinity to the ward;
- A legally adopted child or adoptive parent of the ward;
- A spouse, brother, sister, uncle, aunt, niece, or nephew of the ward, or someone related by lineal consanguinity to any such person; or¹⁷

Every prospective guardian must complete an application for appointment as a guardian. The application must list the person's qualifications to serve as a guardian.¹⁸ A professional guardian and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense:

- A level 2 background screening, before and at least once every 5 years after the date the guardian is registered.¹⁹
- A level 1 background screening²⁰, at least once every 2 years after the date the guardian is registered.²¹
- An investigation of his or her credit history before and at least once every 2 years after the date of the guardian's registration with the Statewide Public Guardianship Office.²²

If the guardian appointed by the court does not meet the definition of "professional guardian," the guardian is considered a nonprofessional guardian. For nonprofessional guardians, the court shall accept the satisfactory completion of a criminal history record check.²³ The nonprofessional guardian can satisfy this requirement by undergoing a state and national criminal history record check using fingerprints. The nonprofessional guardian shall have his or her fingerprints taken and provide them to the Department of Law Enforcement with the appropriate fee for processing.

¹⁹ Section 744.3135(4)(a), F.S.

¹³ Section 744.1085(4), F.S.

¹⁴ Section 744.1085(5), F.S.

¹⁵ See e.g., "Sui juris" means of full age and capacity; possessing full social and civil rights. BLACK'S LAW DICTIONARY (9th ed. 2009).

¹⁶ Section 744.309(1), F.S.

¹⁷ Section 744.309(2), F.S.

¹⁸ Section 744.3125(1), F.S.

 $^{^{20}}$ A "Level 1" background screening includes, but is not limited to, checks of: employment history; statewide criminal history through the Florida Department of Law Enforcement; the Dru Sjodin National Sex Offender Public website; and optional checks through local law enforcement agencies. Section 435.03, F.S. A Level 1 screening also identifies arrests that have not been adjudicated and pleas of nolo contendere to certain enumerated felonies or any history of domestic violence. Section 435.03(2) and (3), F.S. A "Level 2" background screening includes the Level 1 check, plus the submission of fingerprints and a national history records check through the Federal Bureau of Investigation. Section 435.04(1)(a), F.S. ²¹ *Id.*

²² Section 744.3135(5), F.S.

²³ Section 744.3135(2), F.S.

The results shall be forwarded to the clerk of the court, maintained in the nonprofessional guardian's file and made available to the court.²⁴ A guardian may be removed for reasons set forth in the law and the removal shall be in addition to any other penalties prescribed by law.²⁵

Annual Accounting

Each guardian of the property of the ward must file an annual accounting with the court.²⁶ The annual accounting must include a full and correct account of the receipts and disbursements of all of the ward's property over which the guardian has control and a statement of the ward's property on hand at the end of the accounting period. However, the requirement for an accounting does not apply to any property or trust of which the ward is a beneficiary but which is not under the control or administration of the guardian.²⁷

Responsibilities of the Clerk of the Court

In addition to the duty to serve as the custodian of the guardianship files, the clerk must review each initial and annual guardianship report to ensure it contains information about the ward that addresses mental and physical health care, physical and mental health examinations, personal and social services, residential setting, the application of insurance, private benefits and government benefits and the initial verified inventory or the annual accounting.²⁸ The clerk has certain timeframes within which to review reports, audit verified inventory and accountings, and report to the court when a report is not timely filed.²⁹

Court-ordered Sealing of Criminal Records

Sections 943.0585 and 943.059, F.S., provide for the court-ordered expunction or sealing of certain criminal history records. Any court of competent jurisdiction may order a criminal justice agency to seal or expunge the criminal history records of a minor or an adult under certain circumstances. The person seeking to seal a criminal history must apply for and receive a certificate of eligibility for sealing.³⁰ When a court orders a criminal history record of a minor or an adult to be sealed or expunged, he or she may lawfully deny or fail to acknowledge the arrests covered by the sealed records except under certain circumstances.³¹

III. Effect of Proposed Changes:

This bill expands the authority of judges and clerks of court to oversee guardians and guardianship assets.

Section 1 amends s. 744.102(2), F.S., which contains the definition of "audit." Currently the term refers to a systematic review of financial and other documents to ensure compliance with

²⁴ Section 744.3135(3), F.S.

²⁵ Section 744.474, F.S.

²⁶ Section 744.3678(1), F.S.

²⁷ Section 744.3678(2)(a), F.S.

²⁸ Section 744.368(1), F.S.

²⁹ Section 744.368, F.S.

³⁰ Section 943.059, F.S.

³¹ Section 943.059(4)(a), F.S.

court rules and generally accepted accounting principles. Under the bill, the term "audit" also includes various practices that meet professional standards such as verifications, reviews of substantiating papers and accounts, interviews, inspections, and investigations.

Section 2 amends s. 744.3135(1), F.S. to require all guardians (other than corporate guardians) to submit, at their own expense, to an investigation of the person's credit history and undergo a level 2 background screening. The cost of the credit history and level 2 background screening may be insignificant to nonprofessional guardians as they already pay any required fees to undergo state and national criminal history checks and fingerprinting. If appointed, a nonprofessional guardian may petition the court for reimbursement of reasonable expenses incurred for credit history investigation and background screening.

Section 3 amends s. 744.368, F.S., to expand the authority of the clerk of the court at the direction of the court to obtain or review records and documents that reasonably impact guardianship assets, including beginning inventory balances and fees charged to the guardianship. If a guardian fails to produce records or documents to the clerk upon request, the clerk may file an affidavit requesting the court to issue an order that identifies the records or documents requested and which shows good cause as to why the documents are needed by the clerk to complete its audit of the guardian's records. In addition, the clerk may apply to the court for the issuance of a subpoena to nonparties to compel production of books, papers, and other documentary evidence. The clerk must properly notice the guardian and the ward and attach a copy of the affidavit for the subpoena to compel production of records from third parties other than the guardian or ward. The guardian or ward may object to the production of such documents.

Section 4 amends s. 744.3685, F.S., to create a procedure for the guardian to object upon a showing of good cause to a request for records by the clerk pursuant to an audit. After a timely objection, the clerk must obtain a court order to compel the production of the records.

Section 5 amends s. 744.474, F.S., to provide that the failure of a guardian to submit guardianship records during the audit by a clerk as required by s. 744.368, F.S., due to bad faith is grounds for the removal of the guardian.

Section 6 amends s. 943.0585 F.S., to require a person seeking appointment as a guardian to disclose arrests covered by a court-ordered expunction.

Section 7 amend s. 943.059, F.S., to require a person seeking appointment as a guardian to disclose arrests covered by a sealed record.

Section 8 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issue:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Nonprofessional guardians currently pay the costs for fingerprinting and background checks.³² The cost to require nonprofessional guardians to be subject to a credit history investigation and level 2 background screening ranges between \$50 and \$85, depending on which livescan service provider is used to obtain fingerprints.³³ If appointed, the bill authorizes a nonprofessional guardian to petition the court for reimbursement of reasonable expenses incurred for the investigation of the credit history and level 2 background screening.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 58 - 61 of the bill provide: "[i]f appointed, a nonprofessional guardian may petition the court for reimbursement of the reasonable expenses of the credit history investigation and background screening." The Legislature may wish to specify whether this should borne as a guardianship expense or should be paid by another source.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 744.102, 744.3135, 744.368, 744.3685, 744.474, 943.0585, and 943.059.

³² According to the Florida Department of Law Enforcement, during the last 6 months, 572 state and national criminal history checks for nonprofessional guardians were received from the clerks of courts. Email from the Florida Association of Clerks and Comptroller (February 20, 2014) (on file with the Senate Committee on Judiciary).

³³ Informal telephone survey of livescan service providers obtained from the Florida Department of Law Enforcement's website at: <u>https://www.fdle.state.fl.us/Content/getdoc/941d4e90-131a-45ef-8af3-3c9d4efefd8e/Livescan-Service-Providers-and-Device-Vendors.aspx#Service_Providers</u> (last visited on February 26, 2014).

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on February 11, 2014:

- Provides additional responsibilities for the clerk of the court if there is reason to believe further review of records and documents that impact the guardianship assets are appropriate. Provides a process for the clerk to request a court order based on an affidavit that identifies records and documents requested and a show of good cause as to why there are needed to complete the audit. Provides a process for the clerk to issue a subpoena to nonparties for production of documents supported by an affidavit and notice requirements. Provides the guardian or ward a timeframe within which to object to the production of documents.
- B. Amendments:

None.

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

LEGISLATIVE ACTION

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Senate

House

The Committee on Judiciary (Thrasher) recommended the following
Senate Amendment (with title amendment)
Delete lines 43 - 150
and insert:
professional audit standards, such as verifications, reviews of
substantiating papers and accounts, interviews, inspections, and
investigations.
Section 2. Subsection (1) of section 744.3135, Florida
Statutes, is amended to read:
744.3135 Credit and criminal investigation
(1) The court shall require all persons who are seeking

1 2 3



12 appointment by the court, other than a corporate guardian as 13 described in s. 744.309(4) may require a nonprofessional guardian and shall require a professional or public guardian, 14 and all employees of a professional guardian, other than a 15 16 corporate guardian as described in s. 744.309(4), who have a 17 fiduciary responsibility to a ward, to submit, at their own 18 expense, to a an investigation of the guardian's credit history 19 investigation and to undergo level 2 background screening as required under s. 435.04. If appointed, a nonprofessional 20 quardian may petition the court for reimbursement of the 21 reasonable expenses of the credit history investigation and 22 23 background screening. If a credit or criminal history record 24 check is required, The court must consider the results of any 25 investigation before appointing a guardian. At any time, the 26 court may require a guardian or the guardian's employees to 27 submit to an investigation of the person's credit history and 28 complete a level 1 background screening pursuant to as set forth 29 in s. 435.03. The court shall consider the results of any investigation in determining whether to reappoint when 30 reappointing a guardian. The clerk of the court shall maintain a 31 32 file on each guardian appointed by the court and retain in the 33 file documentation of the result of any investigation conducted 34 under this section. A professional guardian shall must pay the clerk of the court a fee of up to \$7.50 for handling and 35 36 processing professional guardian files. 37

Section 3. Subsections (5) through (7) are added to section 744.368, Florida Statutes, to read:

39 744.368 Responsibilities of the clerk of the circuit 40 court.-

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41	(5) If the clork has reason to believe further review is
	(5) If the clerk has reason to believe further review is
42	appropriate, the clerk may request and review records and
43	documents that reasonably relate to the guardianship assets,
44	including, but not limited to, the beginning inventory balance
45	and any fees charged to the guardianship.
46	(6) If a guardian fails to produce records or documents to
47	the clerk upon request, the clerk may request the court to enter
48	an order pursuant to s. 744.3685(2) by filing an affidavit that
49	identifies the records or documents requested and shows good
50	cause as to why the records or documents requested should be
51	produced.
52	(7) Upon application to the court supported by an affidavit
53	pursuant to subsection (6), the clerk may issue subpoenas to
54	nonparties to compel production of records or documents. Before
55	issuance of a subpoena by affidavit, the clerk must serve notice
56	on the guardian and the ward, unless the ward is a minor or
57	totally incapacitated, of the intent to serve subpoenas to
58	nonparties.
59	(a) The clerk must attach the affidavit and the proposed
60	subpoena to the notice to the guardian and, if appropriate, to
61	the ward. The notice must:
62	1. State the time, place, and method for production of the
63	records or documents, and the name and address of the person who
64	is to produce the documents or items, if known, or if not known,
65	a general description sufficient to identify the person or the
66	particular class or group to which the person belongs;
67	2. Include a designation of the records or documents to be
68	produced; and
69	<u>3. State that the person who will be asked to produce the</u>

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70 records or documents has the right to object to the production 71 under this section and that the person is not required to 72 surrender the records or documents. 73 (b) A copy of the notice and proposed subpoena may not be 74 furnished to the person upon whom the subpoena is to be served. 75 (c) If the guardian or ward serves an objection to 76 production under this subsection within 10 days after service of 77 the notice, the records or documents may not be required to be 78 produced until resolution of the objection. If an objection is 79 not made within 10 days after service of the notice, the clerk 80 may issue the subpoena to the nonparty. The court may shorten 81 the period within which a guardian or ward must file an 82 objection if the clerk's affidavit shows that the ward's 83 property is in danger of being wasted, misappropriated, or lost 84 unless immediate action is taken. 85 Section 4. Section 744.3685, Florida Statutes, is amended 86 to read: 87 744.3685 Order requiring quardianship report; contempt.-88 (1) If When a quardian fails to file the quardianship 89 report, the court shall order the guardian to file the report 90 within 15 days after the service of the order upon her or him or 91 show cause why she or he may should not be compelled to do so. 92 (2) If a guardian fails to comply with the submission of records or documents requested by the clerk during the audit, 93 94 upon a showing of good cause by affidavit of the clerk which 95 shows the reasons the records must be produced, the court may 96 order the guardian to produce the records or documents within a 97 period specified by the court unless the quardian shows good 98 cause as to why the guardian may not be compelled to do so

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99	before the deadline specified by the court. The affidavit of the
100	clerk shall be served with the order.
101	(3) A copy of <u>an</u> the order <u>entered pursuant to subsection</u>
102	(1) or subsection (2) shall be served on the guardian or on the
103	guardian's resident agent. If the guardian fails to comply with
104	the order file her or his report within the time specified by
105	the order without good cause, the court may cite the guardian
106	for contempt of court and may fine her or him. The fine may not
107	be paid out of the ward's property.
108	Section 5. Subsection (21) is added to section 744.474,
109	Florida Statutes, to read:
110	744.474 Reasons for removal of guardian.—A guardian may be
111	removed for any of the following reasons, and the removal shall
112	be in addition to any other penalties prescribed by law:
113	(21) The failure in bad faith to submit guardianship records
114	
115	=========== T I T L E A M E N D M E N T =================================
116	And the title is amended as follows:
117	Delete line 12
118	and insert:
119	records and documents relating to guardianship assets
120	and to issue

CS for SB 634

By the Committee on Children, Families, and Elder Affairs; and Senator Brandes

	586-01758-14 2014634c1
1	A bill to be entitled
2	An act relating to guardianship; amending s. 744.102,
3	F.S.; redefining the term "audit"; amending s.
4	744.3135, F.S.; revising the requirements and
5	authorizations of the court to require specified
6	guardians to submit to a credit history investigation
7	and background screening; authorizing a
8	nonprofessional guardian to petition the court for
9	reimbursement for the credit history investigation and
10	background screening; amending s. 744.368, F.S.;
11	authorizing a clerk of the court to obtain and review
12	records impacting guardianship assets and to issue
13	subpoenas to nonparties upon application to the court;
14	providing requirements for affidavits, notice, and
15	subpoenas; providing for objection to a subpoena;
16	amending s. 744.3685, F.S.; authorizing the court to
17	require the production of records and documents by a
18	guardian who fails to submit them during an audit;
19	amending s. 744.474, F.S.; providing for the removal
20	of a guardian for a bad faith failure to submit
21	records during an audit; amending ss. 943.0585 and
22	943.059, F.S.; providing that a person seeking an
23	appointment as guardian may not lawfully deny or fail
24	to acknowledge the arrests covered by an expunged or
25	sealed record; reenacting s. 943.0585(4)(c), F.S.,
26	relating to court-ordered expunction of criminal
27	history records, to incorporate the amendments made to
28	s. 943.0585, F.S., in a reference thereto; reenacting
29	s. 943.059(4)(c), relating to court-ordered sealing of

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30	criminal history records, to incorporate the
31	amendments made to s. 943.059, F.S., in a reference
32	thereto; providing an effective date.
33	
34	Be It Enacted by the Legislature of the State of Florida:
35	
36	Section 1. Subsection (2) of section 744.102, Florida
37	Statutes, is amended to read:
38	744.102 DefinitionsAs used in this chapter, the term:
39	(2) "Audit" means a systematic review of financial and all
40	other documents to ensure compliance with s. 744.368, rules of
41	court, and local procedures using generally accepted accounting
42	principles. The term includes various practices that meet
43	professional standards, such as verifications, reviews of
44	substantiating papers and accounts, interviews, inspections, and
45	investigations.
46	Section 2. Subsection (1) of section 744.3135, Florida
47	Statutes, is amended to read:
48	744.3135 Credit and criminal investigation
49	(1) The court shall require all guardians who are seeking
50	appointment by the court, other than a corporate guardian as
51	described in s. 744.309(4) may require a nonprofessional
52	guardian and shall require a professional or public guardian,
53	and all employees of a professional guardian, other than a
54	corporate guardian as described in s. 744.309(4), who have a
55	fiduciary responsibility to a ward, to submit, at their own
56	expense, to <u>a</u> an investigation of the guardian's credit history
57	investigation and to undergo level 2 background screening as
58	required under s. 435.04. If appointed, a nonprofessional

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59	guardian may petition the court for reimbursement of the
60	reasonable expenses of the credit history investigation and
61	background screening. If a credit or criminal history record
62	$rac{check is required_{r}}{}$ The court must consider the results of any
63	investigation before appointing a guardian. At any time, the
64	court may require a guardian or the guardian's employees to
65	submit to an investigation of the person's credit history and
66	complete a level 1 background screening <u>pursuant to</u> as set forth
67	$\frac{1}{2}$ s. 435.03. The court shall consider the results of any
68	investigation in determining whether to reappoint when
69	reappointing a guardian. The clerk of the court shall maintain a
70	file on each guardian appointed by the court and retain in the
71	file documentation of the result of any investigation conducted
72	under this section. A professional guardian <u>shall</u> must pay the
73	clerk of the court a fee of up to \$7.50 for handling and
74	processing professional guardian files.
75	Section 3. Subsections (5) through (7) are added to section
76	744.368, Florida Statutes, to read:
77	744.368 Responsibilities of the clerk of the circuit
78	court
79	(5) If the clerk has reason to believe further review is
80	appropriate, the clerk may request and review records and
81	documents that reasonably impact guardianship assets, including,
82	but not limited to, the beginning inventory balance and any fees
83	charged to the guardianship.
84	(6) If a guardian fails to produce records and documents to
85	the clerk upon request, the clerk may request the court to enter
86	an order pursuant to s. 744.3685(2) by filing an affidavit that
87	identifies the records and documents requested and shows good

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586-01758-14 2014634c1 88 cause as to why the documents and records requested are needed 89 to complete the audit. 90 (7) Upon application to the court supported by an affidavit 91 pursuant to subsection (6), the clerk may issue subpoenas to 92 nonparties to compel production of books, papers, and other 93 documentary evidence. Before issuance of a subpoena by 94 affidavit, the clerk must serve notice on the guardian and the 95 ward, unless the ward is a minor or totally incapacitated, of 96 the intent to serve subpoenas to nonparties. 97 (a) The clerk must attach the affidavit and the proposed 98 subpoena to the notice to the guardian and, if appropriate, to 99 the ward, and must: 1. State the time, place, and method for production of the 100 101 documents or items, and the name and address of the person who is to produce the documents or items, if known, or if not known, 102 103 a general description sufficient to identify the person or the 104 particular class or group to which the person belongs; 105 2. Include a designation of the items to be produced; and 106 3. State that the person who will be asked to produce the 107 documents or items has the right to object to the production 108 under this section and that the person is not required to 109 surrender the documents or items. 110 (b) A copy of the notice and proposed subpoena may not be 111 furnished to the person upon whom the subpoena is to be served. 112 (c) If the guardian or ward serves an objection to 113 production under this subsection within 10 days after service of 114 the notice, the documents or items may not be required to be 115 produced until resolution of the objection. If an objection is 116 not made within 10 days after service of the notice, the clerk

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117	may issue the subpoena to the nonparty. The court may shorten
118	the period within which a guardian or ward is required to file
119	an objection upon a showing by the clerk by affidavit that the
120	ward's property is in imminent danger of being wasted,
121	misappropriated, or lost unless immediate action is taken.
122	Section 4. Section 744.3685, Florida Statutes, is amended
123	to read:
124	744.3685 Order requiring guardianship report; contempt
125	(1) If When a guardian fails to file the guardianship
126	report, the court shall order the guardian to file the report
127	within 15 days after the service of the order upon her or him or
128	show cause why she or he <u>may</u> should not be compelled to do so.
129	(2) If a guardian fails to comply with the submission of
130	records and documents requested by the clerk during the audit,
131	upon a showing of good cause by affidavit of the clerk which
132	shows the reasons the records must be produced, the court may
133	order the guardian to produce the records and documents within a
134	period specified by the court unless the guardian shows good
135	cause as to why the guardian may not be compelled to do so
136	before the deadline specified by the court. The affidavit of the
137	clerk shall be served with the order.
138	(3) A copy of <u>an</u> the order <u>entered pursuant to subsection</u>
139	(1) or subsection (2) shall be served on the guardian or on the
140	guardian's resident agent. If the guardian fails to <u>comply with</u>
141	the order file her or his report within the time specified by
142	the order without good cause, the court may cite the guardian
143	for contempt of court and may fine her or him. The fine may not
144	be paid out of the ward's property.
145	Section 5. Subsection (21) is added to section 744.474,

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586-01758-14 2014634c1 146 Florida Statutes, to read: 147 744.474 Reasons for removal of guardian.-A guardian may be removed for any of the following reasons, and the removal shall 148 149 be in addition to any other penalties prescribed by law: 150 (21) A bad faith failure to submit guardianship records 151 during the audit pursuant to s. 744.368. 152 Section 6. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended, and paragraph (c) of 153 154 that subsection is reenacted, to read: 155 943.0585 Court-ordered expunction of criminal history 156 records .- The courts of this state have jurisdiction over their 157 own procedures, including the maintenance, expunction, and 158 correction of judicial records containing criminal history 159 information to the extent such procedures are not inconsistent 160 with the conditions, responsibilities, and duties established by 161 this section. Any court of competent jurisdiction may order a 162 criminal justice agency to expunde the criminal history record 163 of a minor or an adult who complies with the requirements of 164 this section. The court shall not order a criminal justice 165 agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and 166 167 received a certificate of eligibility for expunction pursuant to 168 subsection (2). A criminal history record that relates to a 169 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 170 171 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 172 893.135, s. 916.1075, a violation enumerated in s. 907.041, or 173 any violation specified as a predicate offense for registration 174 as a sexual predator pursuant to s. 775.21, without regard to

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

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175	whether that offense alone is sufficient to require such
176	registration, or for registration as a sexual offender pursuant
177	to s. 943.0435, may not be expunged, without regard to whether
178	adjudication was withheld, if the defendant was found guilty of
179	or pled guilty or nolo contendere to the offense, or if the
180	defendant, as a minor, was found to have committed, or pled
181	guilty or nolo contendere to committing, the offense as a
182	delinquent act. The court may only order expunction of a
183	criminal history record pertaining to one arrest or one incident
184	of alleged criminal activity, except as provided in this
185	section. The court may, at its sole discretion, order the
186	expunction of a criminal history record pertaining to more than
187	one arrest if the additional arrests directly relate to the
188	original arrest. If the court intends to order the expunction of
189	records pertaining to such additional arrests, such intent must
190	be specified in the order. A criminal justice agency may not
191	expunge any record pertaining to such additional arrests if the
192	order to expunge does not articulate the intention of the court
193	to expunge a record pertaining to more than one arrest. This
194	section does not prevent the court from ordering the expunction
195	of only a portion of a criminal history record pertaining to one
196	arrest or one incident of alleged criminal activity.
197	Notwithstanding any law to the contrary, a criminal justice
198	agency may comply with laws, court orders, and official requests
199	of other jurisdictions relating to expunction, correction, or
200	confidential handling of criminal history records or information
201	derived therefrom. This section does not confer any right to the
202	expunction of any criminal history record, and any request for
203	expunction of a criminal history record may be denied at the
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586-01758-14 2014634c1 204 sole discretion of the court. 205 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.-Any 206 criminal history record of a minor or an adult which is ordered 207 expunded by a court of competent jurisdiction pursuant to this 208 section must be physically destroyed or obliterated by any 209 criminal justice agency having custody of such record; except 210 that any criminal history record in the custody of the 211 department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is 212 213 confidential and exempt from the provisions of s. 119.07(1) and 214 s. 24(a), Art. I of the State Constitution and not available to 215 any person or entity except upon order of a court of competent 216 jurisdiction. A criminal justice agency may retain a notation 217 indicating compliance with an order to expunge. 218 (a) The person who is the subject of a criminal history 219 record that is expunded under this section or under other 220 provisions of law, including former s. 893.14, former s. 901.33, 221 and former s. 943.058, may lawfully deny or fail to acknowledge 222 the arrests covered by the expunged record, except when the 223 subject of the record: 224 1. Is a candidate for employment with a criminal justice 225 agency; 226 2. Is a defendant in a criminal prosecution; 227 3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.059; 228 229 4. Is a candidate for admission to The Florida Bar; 230 5. Is seeking to be employed or licensed by or to contract 231 with the Department of Children and Families, the Division of

232 Vocational Rehabilitation within the Department of Education,

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233	the Agency for Health Care Administration, the Agency for
234	Persons with Disabilities, the Department of Health, the
235	Department of Elderly Affairs, or the Department of Juvenile
236	Justice or to be employed or used by such contractor or licensee
237	in a sensitive position having direct contact with children, the
238	disabled, or the elderly; or
239	6. Is seeking to be employed or licensed by the Department
240	of Education, any district school board, any university
241	laboratory school, any charter school, any private or parochial
242	school, or any local governmental entity that licenses child
243	care facilities <u>; or</u> -
244	7. Is seeking to be appointed as a guardian pursuant to s.
245	744.3125.
246	(c) Information relating to the existence of an expunged
247	criminal history record which is provided in accordance with
248	paragraph (a) is confidential and exempt from the provisions of
249	s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
250	except that the department shall disclose the existence of a
251	criminal history record ordered expunged to the entities set
252	forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
253	respective licensing, access authorization, and employment
254	purposes, and to criminal justice agencies for their respective
255	criminal justice purposes. It is unlawful for any employee of an
256	entity set forth in subparagraph (a)1., subparagraph (a)4.,
257	subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
258	disclose information relating to the existence of an expunged
259	criminal history record of a person seeking employment, access
260	authorization, or licensure with such entity or contractor,
261	except to the person to whom the criminal history record relates

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 or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Section 7. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended, and paragraph (c) of that subsection is reenacted, to read: 943.059 Court-ordered sealing of criminal history records The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may 		586-01758-14 2014634c1
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284 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for	282	(2). A criminal history record that relates to a violation of s.
839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for	283	393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for	284	800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
287 specified as a predicate offense for registration as a sexual 288 predator pursuant to s. 775.21, without regard to whether that 289 offense alone is sufficient to require such registration, or for	285	839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
288 predator pursuant to s. 775.21, without regard to whether that 289 offense alone is sufficient to require such registration, or for	286	916.1075, a violation enumerated in s. 907.041, or any violation
289 offense alone is sufficient to require such registration, or for	287	specified as a predicate offense for registration as a sexual
	288	predator pursuant to s. 775.21, without regard to whether that
290 registration as a sexual offender pursuant to s. 943.0435, may	289	offense alone is sufficient to require such registration, or for
	290	registration as a sexual offender pursuant to s. 943.0435, may

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291	not be sealed, without regard to whether adjudication was
292	withheld, if the defendant was found guilty of or pled guilty or
293	nolo contendere to the offense, or if the defendant, as a minor,
294	was found to have committed or pled guilty or nolo contendere to
295	committing the offense as a delinquent act. The court may only
296	order sealing of a criminal history record pertaining to one
297	arrest or one incident of alleged criminal activity, except as
298	provided in this section. The court may, at its sole discretion,
299	order the sealing of a criminal history record pertaining to
300	more than one arrest if the additional arrests directly relate
301	to the original arrest. If the court intends to order the
302	sealing of records pertaining to such additional arrests, such
303	intent must be specified in the order. A criminal justice agency
304	may not seal any record pertaining to such additional arrests if
305	the order to seal does not articulate the intention of the court
306	to seal records pertaining to more than one arrest. This section
307	does not prevent the court from ordering the sealing of only a
308	portion of a criminal history record pertaining to one arrest or
309	one incident of alleged criminal activity. Notwithstanding any
310	law to the contrary, a criminal justice agency may comply with
311	laws, court orders, and official requests of other jurisdictions
312	relating to sealing, correction, or confidential handling of
313	criminal history records or information derived therefrom. This
314	section does not confer any right to the sealing of any criminal
315	history record, and any request for sealing a criminal history
316	record may be denied at the sole discretion of the court.
317	(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal

318 history record of a minor or an adult which is ordered sealed by 319 a court of competent jurisdiction pursuant to this section is

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320	confidential and exempt from the provisions of s. 119.07(1) and
321	s. 24(a), Art. I of the State Constitution and is available only
322	to the person who is the subject of the record, to the subject's
323	attorney, to criminal justice agencies for their respective
324	criminal justice purposes, which include conducting a criminal
325	history background check for approval of firearms purchases or
326	transfers as authorized by state or federal law, to judges in
327	the state courts system for the purpose of assisting them in
328	their case-related decisionmaking responsibilities, as set forth
329	in s. 943.053(5), or to those entities set forth in
330	subparagraphs (a)1., 4., 5., 6., and 8. for their respective
331	licensing, access authorization, and employment purposes.
332	(a) The subject of a criminal history record sealed under
333	this section or under other provisions of law, including former
334	s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
335	deny or fail to acknowledge the arrests covered by the sealed
336	record, except when the subject of the record:
337	1. Is a candidate for employment with a criminal justice
338	agency;
339	2. Is a defendant in a criminal prosecution;
340	3. Concurrently or subsequently petitions for relief under
341	this section, s. 943.0583, or s. 943.0585;
342	4. Is a candidate for admission to The Florida Bar;
343	5. Is seeking to be employed or licensed by or to contract
344	with the Department of Children and Families, the Division of
345	Vocational Rehabilitation within the Department of Education,
346	the Agency for Health Care Administration, the Agency for
347	Persons with Disabilities, the Department of Health, the
348	Department of Elderly Affairs, or the Department of Juvenile

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586-01758-14 2014634c1 349 Justice or to be employed or used by such contractor or licensee 350 in a sensitive position having direct contact with children, the 351 disabled, or the elderly; 352 6. Is seeking to be employed or licensed by the Department 353 of Education, any district school board, any university 354 laboratory school, any charter school, any private or parochial 355 school, or any local governmental entity that licenses child 356 care facilities; or 357 7. Is attempting to purchase a firearm from a licensed 358 importer, licensed manufacturer, or licensed dealer and is 359 subject to a criminal history check under state or federal law; 360 or. 361 8. Is seeking to be appointed as a guardian pursuant to s. 362 744.3125. 363 (c) Information relating to the existence of a sealed 364 criminal record provided in accordance with the provisions of 365 paragraph (a) is confidential and exempt from the provisions of 366 s. 119.07(1) and s. 24(a), Art. I of the State Constitution, 367 except that the department shall disclose the sealed criminal 368 history record to the entities set forth in subparagraphs (a)1., 369 4., 5., 6., and 8. for their respective licensing, access 370 authorization, and employment purposes. It is unlawful for any 371 employee of an entity set forth in subparagraph (a)1., 372 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or 373 subparagraph (a)8. to disclose information relating to the 374 existence of a sealed criminal history record of a person 375 seeking employment, access authorization, or licensure with such 376 entity or contractor, except to the person to whom the criminal 377 history record relates or to persons having direct

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

CS for SB 634

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378	responsibility for employment, access authorization, or
379	licensure decisions. Any person who violates the provisions of
380	this paragraph commits a misdemeanor of the first degree,
381	punishable as provided in s. 775.082 or s. 775.083.
382	Section 8. This act shall take effect July 1, 2014.

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The Florida Senate BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

	Pro	epared By: The Professional	Staff of the Commi	ttee on Judiciary
BILL:	SB 260			
INTRODUCER	: Senator L	atvala		
SUBJECT:	Unaccom	panied Youth		
DATE:	March 3, 2	2014 REVISED:		
AN	ALYST	STAFF DIRECTOR	REFERENCE	ACTION
I. Sanford		Hendon	CF	Favorable
2. Lloyd		Stovall	HP	Favorable
3. Davis		Cibula	JU	Pre-meeting

I. Summary:

SB 260 establishes the legal authority for an unaccompanied youth, who is also a certified homeless youth, to consent to certain medical procedures and care without a parent's permission.

The unaccompanied youth must be at least 16 years old and may consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a licensed facility under chapter 394, the Florida Mental Health Act; chapter 395, Hospital Licensing and Regulation; or chapter 397, Substance Abuse Services.

The youth may consent for himself or herself or his or her child if the youth is unmarried, the parent of the child, and has actual custody of the child.

The bill does not eliminate the requirement under the Parental Notice of Abortion Act that a parent be given advance notice of his or her child's intent to obtain an abortion.

II. Present Situation:

Legal Status of Minors

Under Florida law, minors, or persons younger than 18 years,¹ are not entitled to the full range of constitutional and statutory rights that adults enjoy. For example, minors cannot legally vote² or serve on a jury.³ Their ability to enter into marriage is restricted.⁴ The historical reasoning behind

¹ Section 1.01(13), F.S.

² FLA. CONST. art. VI, s. 2.

³ Section 40.01, F.S.

⁴ Section 741.04, F.S.

these diminished rights appears to be that a minor is not fully capable of making decisions in an informed and mature manner. 5

This lack of legal capacity which flows from being a minor is referred to as the "disability of nonage." The disability is removed in Florida for all persons who are 18 years or older except as provided in the Beverage Law.⁶

Removal of the Disability of Nonage or Emancipation

In 1946, the Florida Supreme Court concluded that the disability of nonage "may be removed or regulated by statute in any way that the Legislature may deem advisable."⁷ Chapter 743 contains multiple provisions under which the disability of nonage may be removed and the minor is emancipated and independent of a parent. Some of those provisions permit the removal of the disability of nonage, with restrictions, for a youth in foster care for executing agreements for depository financial services,⁸ contracts for a residential lease,⁹ and agreements for utility services.¹⁰ Additional statutes permit the borrowing of money for higher educational purposes¹¹ and for the donation of blood without compensation.¹²

Several statutes also provide circumstances under which minors may be treated for medical care without parental consent. Physicians may render emergency medical care or treatment when delay would endanger the life of the minor.¹³ An unwed pregnant minor may consent to services or care relating to her pregnancy, and an unwed minor mother may consent to care or services for her child.¹⁴ The disability of nonage for a minor adjudicated as an adult and in the custody of the Department of Corrections is removed for health care services, except for abortion or sterilization.¹⁵

A circuit court has jurisdiction to remove the disability of a minor who is 16 or older if a petition is filed by the minor's natural or legal guardian or a guardian ad litem. The petition must contain pertinent information about the minor and, if the court, after weighing all of the evidence, concludes that it is in the best interest of the minor, must issue an order removing the disabilities of nonage. That order has the effect of giving the minor adult status for purposes of all the criminal and civil laws of the state and authorizes the minor to exercise all of the rights and privileges of persons who are 18 years of age or older.¹⁶

- ¹² Section 743.06, F.S.
- ¹³ Section 743.064, F.S.
- ¹⁴ Section 743.065, F.S.
- ¹⁵ Section 743.066, F.S.
- ¹⁶ Section 743.015, F.S.

⁵ See L.S. v. State, 120 So. 3d 55, 58-59 (Fla. 4th DCA 2013).

⁶ Section 743.07, F.S.

⁷ In Re Brock, 25 So. 2d 659, 660 (Fla. 1946).

⁸ Section 743.044, F.S.

⁹ Section 743.045, F.S.

¹⁰ Section 743.046, F.S.

¹¹ Section 743.05, F.S.

Medical Services for Minors

In general terms, a minor cannot give consent to his or her own medical treatment because of the disability of nonage. At common law, a physician could be liable for battery if he or she touched a minor to render medical treatment without the parent's or representative's consent. This could also be deemed unprofessional conduct and the physician's medical license could be suspended.¹⁷

The Homeless Population in Florida

According to the 2013 Report prepared by the Florida Council on Homelessness and presented to Governor Scott, homelessness is a significant and growing concern in this state. The report noted that:

- Florida has the third largest homeless population in the nation and 8.7 percent of the nation's homeless people live in this state.
- Since 2007, Florida has registered the largest increase of homeless people.
- Approximately 7,107 more residents were homeless in 2012 than in 2007, an increase of 14.8 percent in the state while the national average decreased by 5.7 percent.
- Families with children is the fastest growing demographic of the homeless population.
- In the 2011-2012 school year, the state's school districts identified 63,685 students as homeless children and youth, which represents a 12 percent increase from the previous school year.
- Of the children and youth identified as homeless, 6,798 or 11 percent were classified as "unaccompanied youth," or not in the physical custody of a parent or guardian.¹⁸

Recent Legislative Action

In 2012, legislation was enacted which provided a mechanism for an unaccompanied youth to petition the court to have the disability of nonage removed.¹⁹ The statute authorizes an unaccompanied youth, as defined in federal law, who is also a certified homeless youth, as defined in state statute, and who is 16 year or older, to petition the court for the removal of the disability of nonage in accordance with s. 743.015, F.S., as discussed above. The youth qualifies as a person who is not required to prepay costs and fees in judicial or administrative agency proceedings.

III. Effect of Proposed Changes:

This bill authorizes an unaccompanied youth, under specified circumstances, to consent to certain health services, even though the youth is a minor. The bill creates a new exception under which a minor may seek health care without the permission of a parent.

¹⁸ Florida Council on Homelessness, Council on Homelessness: 2013 Report, <u>www.myflfamilies.com/service-</u>

programs/homelessness. (June 30, 2013). Some of the data in the report was drawn from the 2012 Annual Homeless Assessment Report, Volume I, issued by the U.S. Department of Housing and Urban Development.

¹⁷ Ann Bittinger, Legal Hurdles to Leap to Get Medical Treatment for Children, 80 FLA. B.J. 24, 27 (Jan. 2006).

¹⁹ Section 743.044, F.S.

The youth must:

- Be an "unaccompanied youth" as defined in federal law.²⁰ That federal definition states that the term "unaccompanied youth" includes a youth not in the physical custody of a parent or guardian;
- Be a "certified homeless youth" as defined in state statute.²¹ The statute provides that a certified homeless youth means a minor who is a homeless child or youth, including an unaccompanied youth, as defined in federal law²² and who has been certified as homeless or unaccompanied by either a school district homeless liaison, the director of an emergency shelter program funded by the U.S. Department of Housing and Urban Development, or the director's designee, or the director of a runaway or homeless youth basic center of transitional living program funded by the U.S. Department of Health and Human Services, or the director's designee; and
- Be 16 years of age or older.

The youth may consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, the Florida Mental Health Act; chapter 395, Hospital Licensing and Regulation; or chapter 397, Substance Abuse Services.

The youth may consent to care for:

- Himself or herself; or
- His or her child, if the unaccompanied youth is unmarried, is the parent of the child, and has actual custody of the child.

This bill does not eliminate the requirement under the Parental Notice of Abortion Act that a parent be given advance notice of his or her child's intent to obtain an abortion

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁰ 42 U.S.C. s. 11434a.

²¹ Section 382.002, F.S.

²² 42 U.S.C. s. 11434(A) and (B) state that the term "homeless children and youths" means (generally) an individual who lacks a fixed, regular, and adequate nighttime residence and includes children and youth sharing the housing of other persons due to loss of housing and other reasons; who have a primary nighttime residence that is a public or private place not designed for sleeping; who are living in cars, parks, public spaces, abandoned buildings, or similar settings; and migratory children.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Agency for Health Care Administration reports that rules relating to Florida Medicaid Handbooks for the following services will need to be modified to incorporate the changes in SB 260:

- Birth Center and Licensed Midwife Services;
- County Health Department Services;
- Federally Qualified Health Center Services;
- Rural Health Clinic Services; and
- Community Behavioral Health Services.

The AHCA indicates that the fiscal impact is negligible to modify the handbook.

VI. Technical Deficiencies:

A certified homeless youth who is 16 years of age or older may consent to these services for his or her child if, among other things, the youth has "actual custody" of the child. In this context it is unclear whether actual custody refers to physical custody, legal custody, or something else.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 743.067 of the Florida Statutes.

IX. **Additional Information:**

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

None.

Β. Amendments:

None.

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

Florida Senate - 2014 Bill No. SB 260

LEGISLATIVE ACTION

• • • •

Senate

House

The Committee on Judiciary (Latvala) recommended the following:
Senate Amendment (with title amendment)
Delete everything after the enacting clause
and insert:
Section 1. Section 743.067, Florida Statutes, is amended to
read:
743.067 Unaccompanied homeless youths
(1) For purposes of this section, an "unaccompanied
homeless youth " is an individual, as defined in 42 U.S.C. s.
11434a, who is also a certified homeless youth, as defined in s.
382.002, and who is 16 years of age or older and is:

1 2 3

Florida Senate - 2014 Bill No. SB 260

197174

12	(a) Found by a school district's liaison for homeless
13	children and youths to be an unaccompanied homeless youth
14	eligible for services pursuant to the McKinney-Vento Homeless
15	Assistance Act, 42 U.S.C. ss. 11431-11435; or
16	(b) Believed to qualify as an unaccompanied homeless youth,
17	as that term is defined in the McKinney-Vento Homeless
18	Assistance Act, by:
19	1. The director of an emergency shelter program funded by
20	the United States Department of Housing and Urban Development,
21	or the director's designee;
22	2. The director of a runaway or homeless youth basic center
23	or transitional living program funded by the United States
24	Department of Health and Human Services, or the director's
25	designee;
26	3. A clinical social worker licensed under chapter 491; or
27	4. A court.
28	(2) A minor who qualifies as an unaccompanied homeless
29	youth shall be given a written certificate on agency letterhead,
30	citing to this section, of his or her status as an unaccompanied
31	homeless youth. A health care provider may accept the written
32	certificate under this subsection and may keep a copy of the
33	certificate in the medical file.
34	(3) An unaccompanied homeless youth may:
35	(a) Petition the circuit court to have the disabilities of
36	nonage removed under s. 743.015. The youth shall qualify as a
37	person not required to prepay costs and fees as provided in s.
38	57.081. The court shall advance the cause on the calendar.
39	(b) Consent to medical, dental, psychological, substance
40	abuse, and surgical diagnosis and treatment, including

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19	7174
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41	preventative care and care by a facility licensed under chapter			
42	394, chapter 395, or chapter 397 and any forensic medical			
43	examination for the purpose of investigating any felony offense			
44	under chapter 784, chapter 787, chapter 794, chapter 800, or			
45	chapter 827, for:			
46	1. Himself or herself; or			
47	2. His or her child, if the unaccompanied homeless youth is			
48	unmarried, is the parent of the child, and has actual custody of			
49	the child.			
50	(4) This section does not affect the requirements of s.			
51	390.01114.			
52	Section 2. This act shall take effect July 1, 2014.			
53				
54	========== T I T L E A M E N D M E N T ==============			
55	And the title is amended as follows:			
56	Delete everything before the enacting clause			
57	and insert:			
58	A bill to be entitled			
59	An act relating to unaccompanied homeless youth;			
60	amending s. 743.067, F.S.; defining the term			
61	"unaccompanied homeless youth"; providing for a			
62	certification; authorizing certain unaccompanied			
63	homeless youths to consent to medical, dental,			
64	psychological, substance abuse, and surgical diagnosis			
65	and treatment, and forensic medical examinations for			
66	themselves and for their children in certain			
67	circumstances; providing that such consent does not			
68	affect the requirements of the Parental Notice of			
69	Abortion Act; providing an effective date.			

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By Senator Latvala

	20-00258A-14 2014260
1	A bill to be entitled
2	An act relating to unaccompanied youth; amending s.
3	743.067, F.S.; authorizing certain unaccompanied
4	youths to consent to medical, dental, psychological,
5	substance abuse, and surgical diagnosis and treatment
6	for themselves and for their children in certain
7	circumstances; providing that such consent does not
8	affect the requirements of the Parental Notice of
9	Abortion Act; providing an effective date.
10	
11	Be It Enacted by the Legislature of the State of Florida:
12	
13	Section 1. Section 743.067, Florida Statutes, is amended to
14	read:
15	743.067 Unaccompanied youths
16	(1) An unaccompanied youth, as defined in 42 U.S.C. s.
17	11434a, who is also a certified homeless youth, as defined in s.
18	382.002, and who is 16 years of age or older may <u>:</u>
19	<u>(a)</u> Petition the circuit court to have the disabilities of
20	nonage removed under s. 743.015. The youth shall qualify as a
21	person not required to prepay costs and fees as provided in s.
22	57.081. The court shall advance the cause on the calendar.
23	(b) Consent to medical, dental, psychological, substance
24	abuse, and surgical diagnosis and treatment, including
25	preventative care and care by a facility licensed under chapter
26	394, chapter 395, or chapter 397, for:
27	1. Himself or herself; or
28	2. His or her child, if the unaccompanied youth is
29	unmarried, is the parent of the child, and has actual custody of

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	20-00258A-14	2014260
30	the child.	
31	(2) This section does not affect the requirements	of s.
32	390.01114.	
33	Section 2. This act shall take effect July 1, 2014	4.
	1	

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The Florida Senate BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary						
BILL:	SB 700					
INTRODUCER:	R: Senators Bradley and Detert					
SUBJECT: Department of Juvenile Justice						
DATE:	March 3, 20)14 RE ^v	VISED:			
ANAL	YST	STAFF DIRE	CTOR	REFERENCE		ACTION
. Dugger		Cannon		CJ	Favorable	
Brown		Cibula		JU	Pre-meeting	
6.				ACJ		
ŀ				AP		

I. Summary:

SB 700 amends chapter 985, F.S., which provides a framework for the juvenile justice system in Florida and delineates duties and responsibilities of the Department of Juvenile Justice (DJJ). Specifically, the bill enhances the state's focus on serious juvenile offenders, adopts measures to reduce recidivism, and increases care of juvenile offenders in the custody of the DJJ.

To provide an increased focus on serious cases and public safety, the bill:

- Requires the DJJ to notify a law enforcement agency and the victim of a juvenile offender who has escaped or absconded while in custody during commitment;
- Grants the court jurisdiction over a juvenile sex offender under DJJ supervision until he or she is 21 years old;
- Encourages the DJJ to develop evening-reporting centers to better support children in nonsecure detention;
- Authorizes the court to order juvenile offenders who commit technical violations of probation into a diversion program; and
- Waives fingerprinting requirements for children committing offenses that may only result in a civil citation.

To reduce recidivism through recognizing the special needs of children and the need for transitional services, the bill:

- Authorizes intake personnel to incorporate mental health, substance abuse, and psychosexual evaluations as part of the intake process;
- Establishes trauma-informed care as part of the DJJ model;

- Encourages placement of children in their home communities to facilitate family and community support;
- Enhances the transition-to-adult services offered and lifts the age restriction of youth clients eligible for service; and
- Requires DJJ to focus on prevention services through providing academic and community support for at-risk youth.

To improve care to juveniles in the residential custody of the DJJ, the bill:

- Combines the commitment levels of low-risk and moderate-risk residential commitments into the newly-designated nonsecure residential commitment level and caps the number of beds authorized per facility to 90 from 165 beds;
- Creates a criminal offense of willful and malicious neglect, punishable as a third degree felony if the employee's lack of care does not result in harm to the juvenile offender in DJJ custody and as a second degree felony if great bodily harm results; and
- Allows for prosecution under the new criminal offense for any victim in commitment care, not just children under the age of 18.

To increase performance accountability, the bill requires the DJJ to adopt a system to measure performance based on recidivism rates of providers and programs, and to annually report findings to the Legislature.

The bill codifies implementing language found in the General Appropriations Act which caps the allowable rate for hospital health services provided to juveniles at 110 percent of the Medicare allowable rate, and 125 percent in limited cases.

This bill grants the DJJ greater flexibility in the assessment process by allowing a DJJ employee other than a juvenile probation officer to participate in intake, screenings, and assessments.

II. Present Situation:

DJJ / HRS

In years past, the Department of Health and Rehabilitative Services (HRS) participated in all court proceedings relating to children, including dependency and delinquency cases.¹ In 1994, the Legislature created the Department of Juvenile Justice (DJJ), and assigned the DJJ responsibility for juvenile delinquency cases and children in need of services and families in need of services (CINS/FINS) cases. The HRS retained jurisdiction of dependency cases. Despite this bifurcation, laws governing delinquency and dependency remained together in ch. 39, F.S.²

In 1997, the Legislature transferred provisions relating to juvenile delinquency proceedings of ch. 39, F.S., into ch. 984, F.S., (relating to CINS/FINS) and ch. 985, F.S., (relating to juvenile delinquency cases).³ However, the legislation inadvertently included a handful of provisions

¹ Florida Department of Juvenile Justice, *History of the Juvenile Justice System in Florida*, <u>http://www.djj.state.fl.us/about-us/history</u> (last visited on February 21, 2014).

 $^{^{2}}$ Id.

³ Id.

relating to dependency in the transfer. Dependency duties are now the responsibility of the Department of Children and Family Services (DCF).⁴

Jurisdiction

Section 985.0301(1), F.S., provides that Florida's circuit courts have exclusive original jurisdiction in criminal proceedings in which a child is alleged to have committed a violation. Currently, the circuit court where the alleged violation occurred may transfer a case to the circuit court in which the child resides or will reside at the time of detention or placement.⁵ A child detainee must be transferred to the appropriate detention center or facility or other placement directed by the court receiving the case.⁶

The court retains jurisdiction over a child until the child:

- Is 19 years old, if the child's case has not been resolved;
- Is 19 years old, if the child is ordered to participate in a probation program, including participation in transition-to-adulthood services;
- Is 21 years old, if the child is committed to DJJ;
- Is 22 years old, if the child is committed to DJJ for placement in a juvenile prison or in a high-risk or maximum-risk residential commitment program;⁷
- Is 21 years old, if the child is committed to DJJ for placement in an intensive residential treatment program for 10-13 year-old offenders, in the residential commitment program in a juvenile prison or in a residential sex offender program;
- Is 21 years old, if the child is committed to a juvenile correctional facility or a juvenile prison, specifically for the purpose of allowing the child to complete the program;
- Is 21 years old, if the child is a juvenile sexual offender who has been placed in a program or facility for juvenile sexual offenders, specifically to complete the program; or
- Completes payment of court-ordered restitution.⁸

Contempt of Court

Section 985.037, F.S., authorizes the court to punish a child for contempt for interfering with the court or court administration, or for violating a court order or ch. 985, F.S. Direct contempt results from conduct committed by the juvenile in the presence of the judge, while indirect contempt concerns conduct committed outside the judge's presence.⁹

A child charged with direct contempt may be sanctioned immediately.¹⁰ If a child is charged with indirect contempt, the court must hold a hearing within 24 hours to determine if the child

⁴ Section 39.01(21), F.S.

⁵ Section 985.0301(4)(a), F.S.

⁶ Id.

⁷ This is solely for the child to complete a conditional release program. Section 985.0301(5)(d), F.S.

⁸ Section 985.0301(5), F.S.

⁹ Kelley v. Rice, 800 So.2d 247, 251 (Fla. 2d DCA 2001); E.T. v. State, 587 So.2d 615, 616 (Fla. 1st DCA 1991).

¹⁰ Section 985.037(4)(a), F.S.

committed indirect contempt.¹¹ In indirect contempt proceedings, the child is given specified due process rights.¹²

If a court finds that a child committed contempt of court, the court may order the child to serve an alternative sanction¹³ or order the placement of the child into a secure facility¹⁴ for a specified time.¹⁵ If a child is placed into a secure facility, the court must review the placement every 72 hours.¹⁶

Fingerprinting and Photographing

Section 985.11(1)(a), F.S., requires a child who is charged with or found to have committed specified offenses to be fingerprinted by the appropriate law enforcement agency, and requires the law enforcement agency to submit the fingerprints to the Florida Department of Law Enforcement (FDLE).

Intake Process

Every child under the age of 18 charged with a crime in Florida is referred to DJJ.¹⁷ Intake and screening services for youth referred to DJJ are performed at a Juvenile Assessment Center¹⁸ by a DJJ employee.¹⁹ Once brought into intake, DJJ assigns the child a juvenile probation officer, conducts an assessment, and recommends appropriate sanctions and services to the state attorney and the court.²⁰ The probation officer serves as the primary case manager responsible for managing, coordinating, and monitoring services provided to the child.²¹

Detention Care System

Detention care is the temporary care of children pursuant to an adjudication or order of the court.²² Children may be detained in one of three types of detention care: secure,²³ nonsecure,²⁴

¹⁶ Section 985.037(4), F.S.

¹⁸ Section 985.135(4), F.S.

- ²⁰ Section 985.14(1) and (2), F.S.
- ²¹ Section 985.145(1), F.S.
- ²² Section 985.03(18), F.S.

¹¹ Section 985.037(4)(b), F.S.

 $^{^{12}}$ Id.

¹³ Section 985.037(3), F.S. Each judicial circuit is required to have an alternative sanctions coordinator to coordinate and maintain a spectrum of contempt sanction alternatives. The alternative sanctions coordinator serves under the chief judge of the circuit. The court may immediately request that the alternative sanctions coordinator recommend the most appropriate sanctions placement.

¹⁴ A child may only be placed into a secure facility if alternative sanctions are unavailable or inappropriate. Section 985.037(1), F.S.

¹⁵ Five days for a first offense and 15 days for a second or subsequent offense of contempt. Section 985.037(2), F.S.

¹⁷ A referral is similar to an arrest in the adult criminal justice system.

¹⁹ Section 985.14(2), F.S.

²³ Section 985.03(18)(a), F.S., defines "secure detention" as temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.

²⁴ Section 985.03(18)(b), F.S., defines "nonsecure detention" as temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice pending adjudication, disposition, or placement. However, DJJ reports that its current practice for detention

Section 985.24, F.S., provides guidelines for the court to use in ordering detention care, including that the child:

- Presents a substantial risk of not appearing at a hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court; or
- Requests protection from imminent bodily harm.

If a law enforcement agency takes a child into custody, the DJJ must accept custody of the child and review the facts in the arrest report to determine what, if any, detention care is necessary.²⁶ The probation officer makes an initial decision regarding detention care placement using the "Detention Risk Assessment Instrument."²⁷ In certain instances, the probation officer does not have discretion and must place a child in secure detention (e.g., when a child is charged with possessing or discharging a firearm on school property).²⁸

A child may not be held in secure, nonsecure, or home detention for more than 24 hours without a detention hearing.²⁹ A detention hearing is conducted by a circuit judge who reviews the assessment instrument to determine whether probable cause exists that the child committed the offense and the need for continued detention.³⁰ A court's detention order must include specific instructions for release of the child from detention (generally, a 21-day limit applies to secure, nonsecure, or home detention³¹).³²

If the child is a juvenile sex offender, detention staff must notify the appropriate law enforcement agency and school personnel of the child's release from secure detention or transfer to nonsecure detention.³³

is to only utilize secure or home detention; nonsecure detention has not been used for several years. Department of Juvenile Justice, *2014 Bill Analysis for SB 700* (2014) (on file with the Senate Judiciary Committee).

²⁵ Section 985.03(18)(c), F.S., defines "home detention" as temporary custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication, disposition, or placement.

²⁶ Section 985.25(1), F.S.

²⁷ Sections 985.25(1)(b) and 985.245, F.S. Section 985.245, F.S., outlines with whom the Detention Risk Assessment Instrument must be developed, when and how it must be updated, and what factors the assessment instrument should identify when evaluating a child to determine whether detention placement is appropriate.

²⁸ Section 985.25(1)(b), F.S.

²⁹ Section 985.26(1), F.S. The child has the right to be represented at this hearing or can waive the right. Section 985.033, F.S.

³⁰ Section 985.255(3), F.S.

³¹ Section 985.26(2), F.S. A child may be held up to 30 days if the child is charged with what would be, if committed by an adult, a capital felony, a life felony, a first degree felony, or a second degree felony offense.

³² Section 985.255(3)(c), F.S.

³³ Similarly, once a juvenile sex offender is released from a commitment program, the DJJ must notify the FDLE under ss. 985.481 and 985.4815, F.S. The DJJ has been required to provide this notification electronically since November 1, 2007.

Disposition

The state attorney formally charges a child with a criminal offense by filing a petition for delinquency.³⁴ Because a child may be detained if adjudicated delinquent, federal constitutional law requires many of the same due process safeguards afforded to adult criminal defendants³⁵ and that the case proceed to adjudicatory hearing (trial)³⁶ as quickly as possible. If the court finds that the child committed the violation of law, the court may either withhold adjudication of delinquency or adjudicate the child delinquent.³⁷

If the court finds that a child has committed an offense, the court must hold a disposition hearing to determine appropriate punishment. Before making a final disposition, the court reviews a predisposition report³⁸ prepared by DJJ.³⁹ The pre-disposition report identifies appropriate educational and vocational goals, which include successful completion of vocational courses, and successful attendance and completion of the child's current grade. The court must then determine whether it is appropriate to commit the child to DJJ or probation and community-based sanctions.⁴⁰

Probation or Postcommitment Probation (Probation)

A child's probation program must include both a penalty and a rehabilitative component.⁴¹ Each child is assigned a juvenile probation officer who monitors the child's compliance and helps the child connect with service providers.

If the child does not comply with terms of probation, the child may be brought before the court on a violation of probation. The violation may be a substantive violation by a new criminal offense or a technical violation for failure to comply with a condition of probation.⁴² If a child admits to the violation or is found by the court to have violated probation, the court must enter an order revoking, modifying, or continuing probation.⁴³ Specifically, the court may:

³⁴ Section 985.318, F.S.

³⁵ Section 985.35(2)(a), (b), and (c), F.S., provides that the child is entitled to present evidence, cross examine witnesses, protect himself or herself from self-incrimination, and to not have evidence illegally seized or obtained presented to the court in the case against them. Facts must be established beyond a reasonable doubt and rules of evidence apply to the proceedings. Additionally, s. 985.033(1), F.S., provides that a child is entitled to legal counsel at all stages of any delinquency court proceeding.

³⁶ Section 985.03(2), F.S., defines an "adjudicatory hearing" as a hearing for the court to determine whether the facts support the allegations stated in the petition, as provided under s. 985.35, F.S. In an adjudicatory hearing, the judge decides both questions of fact and law. Section 985.35(2), F.S.

³⁷ Section 985.35, F.S. An adjudication of delinquency by a court is not considered a conviction.

³⁸ Section 985.433(6), F.S., requires the pre-disposition report to include a summary of the juvenile's present offense, a statement by the youth, background information regarding the familial and community environment, a narrative explaining the juvenile's employment or school history, psychological data, restitution information, criminal history, risk assessment, and the recommendations of DJJ concerning the disposition of the case.

³⁹ Section 985.43, F.S.

⁴⁰ Section 985.433(6), F.S.

⁴¹ Section 985.435(2) and (3), F.S., give examples of what these components include.

⁴² See Meeks v. State, 754 So.2d 101, 103-104 (Fla. 1st DCA 2000); Johnson v. State, 678 So.2d 934, 934-935 (Fla. 3d DCA 1996).

⁴³ Section 985.439(4), F.S.

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- Place the child into a consequence unit ⁴⁴ for up to 15 days;
- Place the child on home detention with electronic monitoring;
- Modify or continue the child's probation; or
- Revoke probation and commit the child to DJJ.⁴⁵

Commitment

The court may commit the child to a nonresidential or residential facility.⁴⁶ Commitment programs vary by "restrictiveness level," defined in s. 985.03(46), F.S., as "the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children." Levels of commitment are:

- Minimum-risk nonresidential, a level 2 commitment program, where children remain in their community and participate at least 5 days a week in day treatment;
- Low-risk residential, a level 4 program, where children live in a residential program and have unsupervised access to their community;
- Moderate-risk residential, a level 6 program, where children are in a residential program and have supervised access to their community;
- High-risk residential, a level 8 program, where children are not allowed access to their community; and
- Maximum-risk residential, a level 10 long-term residential program, including juvenile correctional facilities or juvenile prisons that do not allow the children to have any access to their community.⁴⁷

Florida law caps the number of beds at residential facilities at 165 beds.⁴⁸

If the court determines that the child should be adjudicated delinquent and committed to the DJJ through court order, ⁴⁹ the DJJ must recommend the restrictiveness level for the child. The court may commit the child at a different restrictiveness level but must set out findings for departure in the record based on a preponderance of the evidence.⁵⁰

Once the court enters a commitment order, DJJ is responsible for determining placement in a specific residential program based on the child's identified risks and needs.⁵¹ Currently, the court must order a child to be placed in a specific restrictiveness level from level 2 through level 10 and DJJ does not have the flexibility to move a child into a different restrictiveness level.

⁴⁴ Section 985.439(2), F.S., defines "consequence unit" as a secure facility specifically designated by the department for children who are taken into custody under s. 985.101, F.S., for violating probation or postcommitment probation, or who have been found by the court to have violated the conditions of probation or postcommitment probation.

⁴⁵ Section 985.439(4)(d), F.S.

⁴⁶ Section 985.441, F.S.

⁴⁷ Section 985.03(46)(e), F.S.

⁴⁸ Section 985.03(46), F.S.

⁴⁹ Section 985.441(1), F.S.

⁵⁰ Section 985.441(2), F.S.

⁵¹ Department of Juvenile Justice, *Residential Services*, Comprehensive Accountability Report, Fiscal Year 2011-2012, <u>http://www.djj.state.fl.us/research/reports/car</u> (last visited February 24, 2014).

A child is committed to a residential program for an indeterminate length of time and must complete an individualized treatment plan.⁵² The goals of the plan are based on the child's rehabilitative needs and include educational and vocational service goals.⁵³ All residential programs provide medical, mental health, substance abuse, and developmental disability services.⁵⁴

Conditional Release and Transition-to-Adulthood Services

Conditional release is defined as the care, treatment, help, and supervision provided to a juvenile released from a residential commitment program. The purposes of conditional release are to protect the public, reduce recidivism, increase responsible productive behavior, and provide for a successful transition of the youth from the DJJ to the family.⁵⁵

The DJJ must assess each child placed into a residential commitment facility to determine the need for conditional release services upon release from the facility.⁵⁶ Children participating in conditional release services must participate in an educational program ⁵⁷ if they are of compulsory school attendance age or noncompulsory school age and have not obtained a high school diploma or its equivalent.⁵⁸ A child who has received a diploma or equivalent, but is not employed, must attend college classes, other career education, or participate in workforce development.⁵⁹

The DJJ must also provide older ⁶⁰ children with opportunities to participate in "transition-toadulthood" services that build life skills and increase the ability to live independently and be self-sufficient.⁶¹ The DJJ is authorized to engage in a variety of activities designed to support participation in transition-to-adulthood services.⁶²

Internal Agency Procedures

Administering the Juvenile Justice Continuum

Section 985.601, F.S., requires DJJ to develop or contract for diversified and innovative programs to provide rehabilitative treatment.

Quality Assurance and Cost-Effectiveness

Section 985.632, F.S., requires DJJ to provide transparency to policy makers and the public about the costs and effectiveness of the programs that it operates. The DJJ is also required to develop an accountability system to assist in ensuring that children served receive the best services for their needs.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Section 985.03(12), F.S.

⁵⁶ Section 985.46(3), F.S.

⁵⁷ Pursuant to s. 1003.21(1)(a)1. and (2)(a), F.S.

⁵⁸ Section 985.46(5), F.S.

⁵⁹ Id.

⁶⁰ The term "older" in s. 985.461(2)(b), F.S., refers to children 17 years of age or older.

⁶¹ Section 985.461(1), F.S.

⁶² Section 985.461(4), F.S.

The DJJ is required to annually collect cost data for every program that it operates or contracts for and submit this data to the Legislature and the Governor.⁶³ The DJJ is also required to develop a cost-effectiveness model and apply the model to each commitment program. The cost-effectiveness model must compare program costs to client outcomes and program outputs, and include recidivism rates.⁶⁴ The DJJ must rank each commitment program based on the cost-effectiveness model and may terminate a program if the program has failed to achieve a minimum threshold of program effectiveness.

Departmental Contracting Powers; Personnel Standards and Screening

Section 985.644, F.S., requires DJJ employees and all personnel⁶⁵ of contract providers to complete a:

- Level 2 employment screening prior to employment (which requires fingerprinting);⁶⁶ and
- National criminal records check by the Federal Bureau of Investigation every 5 years following the date of the person's employment.

The DJJ must electronically submit fingerprint information of DJJ employees and contract personnel (other than law enforcement, correctional, and correctional probation officers) to FDLE.

Juvenile Justice Training Academies

The DJJ is required to establish and oversee juvenile justice training academies.⁶⁷ The DJJ must develop, implement, and maintain the curriculum for the training academies, develop uniform minimum job-related training, and establish a certifiable program for juvenile justice training.⁶⁸

Section 985.66(3), F.S., requires DJJ to provide specified components to the training programs for the juvenile justice program staff based upon a job-task analysis.⁶⁹ All department program staff and providers who deliver direct care services pursuant to contract with DJJ must participate in and successfully complete the approved training programs relevant to their areas of employment.⁷⁰ Judges, state attorneys, public defenders, law enforcement officers, and school district personnel may also participate in these programs.

⁶³ Section 985.632(3), F.S.

⁶⁴ Section 985.632(4)(a), F.S.

⁶⁵ Section 985.644(3)(a), F.S., states that personnel includes all owners, operators, employees, persons who have access to confidential juvenile records, and volunteers of contract providers for any program for children.

⁶⁶ Section 435.04, F.S. Level 2 employment screenings require fingerprints to be processed through statewide criminal history records checks through FDLE and national criminal history records checks through the Federal Bureau of Investigation. The screenings may include local criminal records checks through local law enforcement agencies.
⁶⁷ Section 985.66(1), F.S.

⁶⁸ Section 985.66(1), (2), and (3), F.S.

⁶⁹ These components include designing, implementing, maintaining, evaluating, and revising a basic training program for the purpose of providing specified minimum employment training qualifications for all juvenile justice personnel, including a competency-based examination; an advanced training program intended to enhance knowledge, skills, and abilities related to job performance with competency-based examinations for each training course; a career development training program intended to prepare personnel for promotion with competency-based examinations for each training course; and juvenile justice training courses, entering into contracts for training courses intended to further safety and well-being of both citizens and juvenile offenders. Section 985.66(3), F.S.

⁷⁰ Section 985.66(3), F.S.

Juvenile Justice Circuit Advisory Boards

Section 985.664, F.S., authorizes juvenile justice circuit advisory boards (advisory boards) to be established in each of the 20 judicial circuits. The purpose of advisory boards is to advise DJJ in the development and implementation of juvenile justice programs and policies related to at-risk youth.⁷¹ The duties of the advisory boards are enumerated in s. 985.664(2), F.S.

Direct-Support Organizations

Section 985.672, F.S., defines a direct support organization as a not-for-profit organization whose sole purpose is to support the juvenile justice system and which is:

- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of DJJ or the juvenile justice system operated by a county commission or a circuit board; and
- Determined by DJJ to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with DJJ's adopted goals and mission.

The DJJ may permit a direct support organization to use fixed property and facilities of the juvenile justice system free of charge.⁷²

Siting of Facilities

Section 985.682, F.S., establishes procedures that must be followed when proposing a site for a juvenile justice facility. Currently, DJJ is required to conduct a detailed statewide comprehensive study to determine current and future needs for all facility types for children committed to DJJ.⁷³ The study must assess, rank, and designate appropriate sites based upon these needs.⁷⁴

One-Time Startup Funding for Juvenile Justice Purposes

Section 985.69, F.S., authorizes DJJ to use funds from juvenile justice appropriations as one-time startup funding for juvenile justice purposes that include remodeling or renovation of existing facilities, construction and leasing costs, purchase of equipment and furniture, site development, and other necessary and reasonable costs associated with the startup of facilities or programs. The DJJ is currently funded for repair and maintenance of facilities through the General Appropriations Act.

Payment of Medical Expenses for Detained Youth

Medicare Rates

Medicare is the federal health insurance program for people who are 65 or older, certain younger people with disabilities, and people with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a transplant).⁷⁵

⁷¹ Section 985.664(1), F.S.

⁷² Section 985.672(4), F.S.

⁷³ Section 985.682(1), F.S.

⁷⁴ Section 985.682(2), F.S.

⁷⁵ Centers for Medicare & Medicaid Services, *What is Medicare?*, <u>http://www.medicare.gov/sign-up-change-plans/decide-how-to-get-medicare/whats-medicare/what-is-medicare.html</u> (Last visited February 24, 2014).

Medicare reimburses providers based on the type of service they provide. The Centers for Medicare & Medicaid Services develops fee schedules for physicians, ambulance services, clinical laboratory services, and durable medical equipment, prosthetics, orthotics, and supplies.⁷⁶ Other Medicare providers are paid via a prospective payment system. The prospective payment system is a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, diagnosis-related groups for inpatient hospital services).

The Department of Corrections and Medical Payment Caps

In 2008, the General Appropriations Implementing Bill ⁷⁷ capped medical payment rates that the Department of Corrections (DOC) could pay to a hospital or a health care provider providing services at a hospital. Payments to providers for services were capped at 110 percent of the Medicare allowable rate for inmate medical care if no contract existed between DOC and a hospital, or a provider providing services at a hospital. However, hospitals reporting an operating loss to the Agency for Health Care Administration (AHCA) were capped at 125 percent of the Medicare allowable rate. In 2009, s. 945.6041, F.S., codified the payment caps and made other medical service providers, defined in s. 766.105, F.S., and medical transportation services subject to the medical payment cap.⁷⁸

Similarly, the 2013 General Appropriations Implementing Bill capped medical payment rates that DJJ could pay to a hospital or provider providing any health care services.⁷⁹

Offenses Committed Against Youth under the Jurisdiction of DJJ

Sexual Misconduct by an Employee

Section 985.701, F.S., makes it a second degree felony ⁸⁰ for a DJJ employee ⁸¹ to engage in sexual misconduct ⁸² with juvenile offenders "detained or supervised by, or committed to the custody, of the department." The statute does not define the term "juvenile offender."

Neglect of Youth Committed to the Department of Juvenile Justice

Section 985.02, F.S., provides that the children of the state must be provided with protection from abuse, neglect, and exploitation; as well as adequate nutrition, shelter, and clothing. In

⁷⁶ Centers for Medicare & Medicaid Services, *Fee Schedules – General Information*,

http://www.cms.gov/FeeScheduleGenInfo/ (Last visited on February 24, 2014).

⁷⁷ Section 11, Chapter 2008-153, L.O.F.

⁷⁸ Section 8, Chapter 2009-63, L.O.F.

⁷⁹ Section 12, Chapter 2013-41, L.O.F.

⁸⁰ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁸¹ Section 985.701(1)(a)1.b., F.S., defines "employee" as paid staff members, volunteers, and interns who work in a DJJ program or a program operated by a provider under a contract.

⁸² Section 985.701(1)(a)1.a., F.S., defines "sexual misconduct" as fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of DJJ or an employee of a provider under contract with DJJ.

some instances, a DJJ employee has neglected or abused a juvenile offender resulting in harm to the juvenile offender.⁸³

Currently, ch. 985, F.S., does not provide sanctions against the neglect of a youth in DJJ's custody. As a result, prosecutors have looked outside of ch. 985, F.S., to prosecute cases involving abuse or neglect of a child in the care of DJJ. One statute prosecutors have attempted to use to prosecute is s. 827.03, F.S., relating to criminal child neglect. However, the child neglect statute is not designed to prosecute neglect cases that arise within the unique framework of the juvenile justice environment, nor does it apply to youth in DJJ's custody who are 18 or older.⁸⁴

Diversion Programs/Expunction of Records

Section 943.0582, F.S., provides guidelines to the FDLE relating to the expunction of criminal history records of youth who have successfully completed a prearrest, postarrest, or teen court diversion program.

Prevention Services Programs and Providers

Section 985.605, F.S., requires DJJ to monitor all state-funded programs, grants, appropriations, or activities designed to prevent juvenile delinquency.⁸⁵ The DJJ is authorized to expend funds to prevent juvenile delinquency as long as DJJ maximizes public accountability and documents outcomes. Each entity that receives money from the state must design its programs to provide one of four specified strategies ⁸⁶ and submit demographic information of participants to DJJ for verification.⁸⁷

Section 985.606, F.S., requires each state agency or entity that receives or uses state money to fund juvenile delinquency prevention programs, grants, appropriations, or activities to submit performance data to the Governor and both houses of the Legislature by January 31st of each year for the preceding fiscal year.

Tours of State Correctional Facilities

Section 945.75, F.S., requires DOC to develop programs in which a judge may order juveniles who have committed delinquent acts to be allowed to tour state correctional facilities under terms and conditions established by DOC. The statute requires counties to develop similar programs

⁸⁴ Section 827.01, F.S., defines a child as "any person under the age of 18 years." While the majority of youth in DJJ's custody are under 18 years old, DJJ has custody of persons 18 years old and older. Section 985.0301(5)(a), F.S., requires DJJ to retain jurisdiction over a child alleged to have committed a delinquent act until the child reaches 19 years old and authorizes DJJ to retain jurisdiction for an additional 365 days following the child's 19th birthday if the child is participating in transition-to-adulthood services.

⁸³ *DJJ supervisor thought Eric Perez was "faking" as he dies in juvie lockup, officer testifies*, BROWARD/PALM BEACH NEW TIMES, <u>http://blogs.browardpalmbeach.com/pulp/2012/03/djj eric perez death grand jury report.php</u>; *Parents of teen who died at Palm Beach County juvenile center say they'll sue DJJ*, THE PALM BEACH POST, <u>http://www.palmbeachpost.com/news/news/crime-law/parents-of-teen-who-died-at-palm-beach-county-ju-1/nLhcN/</u>.

⁸⁵ Section 985.605(1), F.S.

⁸⁶ Section 985.605(2)(a), F.S.

⁸⁷ Section 985.605(2)(c), F.S.

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involving county jails, commonly referred to as "scared straight programs."⁸⁸ The goal of these programs is to modify the behavior of the juveniles by shocking, scaring, and thus deterring them from engaging in further delinquent activity.⁸⁹ The DJJ reports that because it complies with the Federal Juvenile Justice and Delinquency Prevention Act of 2002 it receives between 2 million and 8 million dollars in federal funding.⁹⁰ The DJJ reports that it could lose two-thirds of its federal funding because the scared straight tours violate several portions of the Juvenile Justice and Delinquency Prevention Act.⁹¹

III. Effect of Proposed Changes:

The bill amends various provisions in law relating to juvenile delinquency, to enhance public safety, reduce recidivism, better measure performance outcomes, and improve care provided to juvenile offenders in the custody of the DJJ.

Prevention

The bill creates s. 985.17, F.S., relating to prevention services. To reduce recidivism, protect public safety, and facilitate successful re-entry into the community, the bill requires DJJ to:

- Engage faith- and community-based organizations;⁹²
- Establish volunteer coordinators in each circuit and encourage mentor recruitment;
- Encourage the recruitment of volunteers to serve as mentors for youth in DJJ services;
- Promote the "Invest in Children" license plate to help fund programs and services;⁹³
- Ensure that prevention services address the multiple needs of youth at risk of becoming delinquent in order to decrease the prevalence of disproportionate minority representation in the juvenile justice system; and
- Expend prevention-related funds in a manner that maximizes accountability and ensures documentation of outcomes.

The bill provides that as a condition for receiving state funds, entities that receive or use state moneys to fund prevention services through contracts with DJJ or grants from an entity must:

- Design programs providing services to further one or more of the following strategies:
 - Encourage youth to attend and succeed in school;
 - Engage youth in productive and wholesome activities during non-school hours that build positive character, instill positive values, and enhance educational experiences;

⁸⁸ Virginia Department of Criminal Justice Services, *Scared Straight Programs*, <u>www.dcjs.virginia.gov/juvenile/compliance</u>; *See also* Department of Juvenile Justice, *Scared Straight Programs: Jail and Detention Tours*,

www.djj.state.fl.us/docs/research2/scared_straight_booklet_version (last visited on February 12, 2014) ⁸⁹ Id.

⁹⁰ Department of Juvenile Justice, 2013 Agency Proposal, Juvenile Justice Reform, Jail Tours (2013) (on file with Senate Criminal Justice Committee.)

⁹¹ Id.

⁹² The bill further provides that the voluntary programs and services include, but are not limited to, chaplaincy services, crisis intervention counseling, mentoring, and tutoring.

⁹³ The bill further requires DJJ to allocate moneys for programs and services within each county based on that county's proportionate share of the license plate annual use fee collected by the county, which is identical to how s. 320.08058(11), F.S., specifies the money should be allocated.

- Encourage youth to avoid the use of violence; and
- Assist youth to acquire skills needed to find meaningful employment, including assistance in finding a suitable employer; and
- Provide the department with demographic information, dates of services, and the type of interventions received by each youth.

The bill requires DJJ to monitor output and outcome measures for each program strategy and annually report this data in the Comprehensive Accountability Report. The bill also requires DJJ to monitor all state-funded programs that receive or use state moneys to fund the juvenile delinquency prevention services through contracts or grants for compliance with contract and grant provisions.

Offenses Committed Against Youth under the Jurisdiction of DJJ

Sexual Misconduct by an Employee

The bill amends s. 985.701, F.S., to define "juvenile offender" as "any person of any age who is detained, or committed to the custody of the department." This mirrors the definition used in s. 985.702, F.S.

Neglect of Youth Committed to the Department of Juvenile Justice

The bill creates s. 985.702, F.S., establishing a new criminal offense relating to willful and malicious neglect of a juvenile offender. The bill makes it a third degree felony ⁹⁴ for a DJJ employee to willfully and maliciously neglect a juvenile offender *without* causing great bodily harm, permanent disability, or permanent disfigurement. If the neglect does cause great bodily harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a second degree felony.⁹⁵

The bill defines an "employee" as a paid staff member, volunteer, or intern who works in a DJJ program or a program operated by a provider under contract with DJJ. A "juvenile offender" is defined as "any person of any age who is detained by, or committed to the custody of, the department." "Neglect" is defined as an employee's:

- Failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or
- Failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

If the Public Employees Relations Commission determines that a DJJ employee violates the newly created s. 985.702, F.S., the determination constitutes sufficient cause under s. 110.227,

⁹⁴ A third degree felony is punishable by up to five years imprisonment and a fine of up to \$5,000. Sections 775.082, 775.083, and 775.084, F.S.

⁹⁵ A second degree felony is punishable by up to 15 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

F.S.,⁹⁶ for dismissal from employment with DJJ, and prohibits the employee from being employed in any capacity in the juvenile justice system.

The bill requires employees who witness the neglect of a juvenile offender to immediately report the incident to DJJ's incident hotline. The witness must also prepare an independent report specifically describing the incident, location and time, and persons involved. The report must be submitted to the witness's supervisor or program director, who in turn must provide copies of the report to the inspector general and the circuit juvenile justice manager. The inspector general must immediately conduct an appropriate administrative investigation and, if probable cause exists, notify the state attorney in the circuit in which the incident occurred.

Any person required to prepare a report who knowingly or willfully fails to do so or prevents another person from filing a report commits a first degree misdemeanor.⁹⁷ In addition, any person who knowingly or willfully:

- Submits inaccurate, incomplete, or untruthful information on a report commits a first degree misdemeanor.
- Coerces or threatens another person with the intent to alter testimony or a written report commits a third degree felony.

Trauma-informed Care as a Component of the DJJ Model

The bill requires the DJJ to implement trauma-informed care in its model of response and delivery of services to juvenile offenders. "Trauma-informed care" is defined to mean providing services to children with a history of trauma, which recognizes the symptoms of trauma and acknowledges the role the trauma has played in the child's life. Trauma may include, but is not limited to, community and school violence, physical or sexual abuse, neglect, medical difficulties, and domestic violence.

Family Support

The bill recognizes the importance in placing facilities close to the home communities of children they house in facilitating family involvement in the treatment process. The bill encourages the use of customized treatment plans to prepare a child for a successful transition back to his or her family and community support system.

Detention Care System

The bill streamlines the definition of "detention care" found in s. 985.03, F.S., to remove "home detention," thereby limiting the definition to "secure" and "nonsecure" detention. The bill amends the definition of "nonsecure detention" to mean:

Temporary nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive home environment under the

⁹⁶ Section 110.227, F.S., relates to the suspension and dismissal of career service employees.

⁹⁷ A first degree misdemeanor is punishable by up to 1 year incarceration and a potential fine up to \$1,000. Sections 775.082, F.S. and 775.083, F.S.

supervision of DJJ staff pending adjudication, disposition, or placement. Forms of nonsecure detention may include, but are not limited to home detention, electronic monitoring, day reporting centers, evening reporting centers, nonsecure shelters, and may include other requirements imposed by the court.

The bill authorizes DJJ to develop evening reporting centers (centers), which are included in the definition of "nonsecure detention." These centers serve as an alternative to placing a child in secure detention and may be co-located with a juvenile assessment center. Centers must serve children and families who are awaiting a child's court hearing and must operate at a minimum during the afternoon and evening hours to provide a highly structured program of supervision. Centers may also provide academic tutoring, counseling, family engagement programs, and other activities.

The term "juvenile probation officer" is replaced with the term "department" throughout many of the detention-related statutes, which will allow DJJ greater flexibility to use employees other than probation officers in initial detention placement. The bill specifies that a child's "illegal possession of a firearm" can be considered as a basis for ordering detention or continued detention and requires secure detention for any child who has been taken into custody on three or more separate occasions within a 60-day period.

The bill requires detention staff to notify the appropriate law enforcement agency, school personnel, and victim when a child charged with any of the following offenses is released from secure detention or transferred to nonsecure detention:

- Murder, under s. 782.04, F.S.;
- Sexual battery, under ch. 794, F.S.;
- Stalking, under s. 784.048, F.S; or
- Domestic violence, as defined in s. 741.28, F.S.

In some respects, the notice requirement expands notice by not limiting notice to juvenile sex offenses. In other respects, this provision limits notice, as notice is only required for sexual battery, not all of the currently-included offenses that qualify a child as a juvenile sex offender.

In instances where a detained child is transferred to a jail or other facility used to detain adults,⁹⁸ the bill requires physical observation and documented checks of the child every 10 minutes. Existing law requires observations every 15 minutes.

The court must place in detention care all children who are adjudicated and awaiting placement in a commitment program. In such instances, the bill requires, rather than permits, a child who has been committed to a high-risk or maximum risk residential facility to be held in secure detention until placement.

⁹⁸ Section 985.265(5), F.S., sets forth instances in which a child may be detained in a jail or other facility used to detain adults.

Jurisdiction

The bill amends s. 985.0301, F.S., to authorize, rather than require, the court to transfer a detained child to a detention center in the circuit in which the child resides or will reside at the time of detention. The bill restricts transfers to only these two circumstances, which means the receiving court will no longer be able to direct where the detained child may be placed when a case is being transferred.

The bill simplifies statutory jurisdictional criteria. As a result, the court will retain jurisdiction over a child until the child:

- Is 19 years old, generally, or if the child is in a probation program;
- Is 21 years old, if the child is committed to DJJ in any type of commitment program, specifically for the purpose of allowing the child to complete the commitment program, including conditional release supervision;
- Is 21 years old, if the child is a juvenile sexual offender who has been placed on communitybased treatment alternative with supervision, or in a program or facility for juvenile sexual offenders, specifically for the purpose of completing the program; or
- Satisfies restitution ordered in the case.

Contempt of Court

The bill requires the court to hold a hearing to determine if a child committed direct contempt of court and affords the child specified due process rights at this hearing. The bill also clarifies that if a judge places a child into a secure facility for contempt, the facility must be a detention facility. In these instances, the court needs to review the placement only upon motion by the defense attorney or state attorney. Under existing law, the court must review the placement every 72 hours.

Fingerprinting and Photographing

The bill excludes a child from fingerprint requirements if the child is issued a civil citation. This provision may better focus resources on more serious juvenile offenders by waiving fingerprinting requirements of children charged with nonserious delinquent acts.

Intake Process

The bill amends s. 985.14, F.S., to allow both DJJ and juvenile assessment center personnel to perform the intake process, which may provide for a more efficient intake process in counties that operate their own juvenile assessment centers. The bill also:

- Clarifies that the intake assessment process consists of an initial assessment that may be followed by a full mental health, substance abuse, and/or psychosexual evaluation, which may help decision makers better target successful treatment and reduce recidivism; and
- Requires children to be screened to determine career or technical education problems (rather than just vocational problems), which provides more options for children in pursuing a successful career.

Disposition

Predisposition Reports

The bill requires the predisposition report to identify appropriate educational and career (rather than vocational) goals, which include:

- Successful completion of career and technical education courses (rather than vocational courses); and
- Successful completion of the child's current grade or recovery of credits or classes the child previously failed.

Probation or Postcommitment Probation (Probation)

The bill amends s. 985.435, F.S., to authorize a court to impose an alternative consequence for juveniles on probation who commit relatively minor violations (technical violations). If so, the judge must approve specific consequences for specific future violations of the conditions of probation. Alternative consequence programs:

- Must be established at the local level in coordination with law enforcement agencies, the Chief Judge of the circuit, the State Attorney, and the Public Defender; and
- May be operated by a law enforcement agency, DJJ, a juvenile assessment center, or another entity selected by DJJ.

Commitment

The bill replaces the term "juvenile probation officer" with the term "department" throughout many of the commitment-related statutes, which will allow DJJ to use employees other than probation officers to perform commitment-related duties.

The bill combines the "restrictiveness levels" in s. 985.03(46), F.S., of low-risk residential (level 4) and moderate-risk residential (level 6) into one group, "nonsecure residential." This will allow DJJ to place a child whose risk is currently low into a program that caters to children with slightly higher risk levels to ensure the child access to other needs and services.

The current cap on residential beds per facility is reduced to 90 beds from 165. This reduction in the number of residential beds authorized per facility may increase efficiency of the facility in meeting the goals of commitment and reduce recidivism.

The bill amends s. 985.441, F.S., to allow certain youth⁹⁹ to be committed to nonsecure residential placement if the child has:

- Previously been adjudicated or had an adjudication withheld for a felony offense; or
- *Previously* been adjudicated or had adjudication withheld for three or more misdemeanor offenses *within the last 18 months*.

⁹⁹ This includes youth whose offense is a misdemeanor as well as youth who are on probation for a misdemeanor who commit a technical violation. Section 985.441(2), F.S.

The bill amends s. 985.275, F.S., to require DJJ to notify a law enforcement agency and, if the offense requires victim notification under ch. 960, F.S., the victim, any time a child in the custody of DJJ:

- Escapes from a residential commitment program or from being transported to or from one; or
- Absconds from a nonresidential commitment facility.

The bill further requires DJJ to make every reasonable effort to locate the child.

Conditional Release and Transition-to-Adulthood Services

The bill amends s. 985.46, F.S., to clarify that conditional release includes the provision of transition-to-adulthood services. The bill also requires a child of noncompulsory school age on conditional release supervision to participate in the education program *or career and technical education courses*.

The bill expands the application of transition-to-adulthood services by removing the limitation that these services only be provided to "older children." As a result, any child who is under the supervision of DJJ may be provided transition-to-adulthood services as part of his or her treatment plan.

The bill also expands the activities DJJ is authorized to engage in to support participation in transition-to-adulthood services. Specifically, DJJ may:

- Employ community re-entry teams to assist in developing a list of age appropriate activities and responsibilities to be incorporated in the child's case plan. Community re-entry teams include representatives from school districts, law enforcement, workforce development services, community based service providers, and the child's family.
- Assist the child in building a portfolio of educational and vocational accomplishments, necessary identification, and resumes and cover letters to enhance the child's employability; and
- Collaborate with school district contacts to facilitate appropriate educational services based on the child's identified needs.

Internal Agency Procedures

Quality Assurance and Cost-Effectiveness

The bill does the following by amending s. 985.632, F.S.:

- Requires the annual report to collect and analyze available statistical data for the purpose of ongoing evaluation of all programs;
- Deletes the terms "client" and "program effectiveness" and adds the following definitions:
 - "Program," which means any facility or service for youth that is operated by DJJ or by a provider under contract with DJJ; and
 - "Program group," which means a collection of programs with sufficient similarity of functions, services, and youth to permit appropriate comparison among programs within the group;

- Codifies the Comprehensive Accountability Report (CAR), ¹⁰⁰ and requires DJJ to work with the Office of Economic and Demographic Research to develop a standard methodology for measuring and reporting program outputs and youth outcomes;
- Requires the standard methodology used in the CAR to include certain terminology for measuring performance, specify program outputs, and specify desired child outcomes and methods to measure child outcomes; and
- Requires the cost-effectiveness model to include a comparison of costs to expected and actual child recidivism rates, rather than client outcomes and program outputs; and requires the DJJ to rank commitment programs based on performance measures and adherence to quality improvement standards.

Departmental Contracting Powers; Personnel Standards and Screening

The bill provides that law enforcement, correctional, or correctional probation officers certified pursuant to s. 943.13, F.S., are not required to submit to level 2 screenings, if they are currently employed by a law enforcement agency or correctional facility.

Juvenile Justice Training Academies

The bill amends s. 985.66, F.S., to do the following:

- Remove references to "academies" when referring to juvenile justice training programs;
- Require DJJ to designate the *number* of (not just the location of) training programs and courses; and
- Authorize all employees of contract providers who provide services or care for youth under the responsibility of DJJ to participate in the certifiable training program.

Juvenile Justice Circuit Advisory Boards

The bill removes obsolete language and specifies that the chair of a board serves at the pleasure of DJJ's Secretary.

Direct-Support Organizations

Current law does not address whether DJJ may authorize direct support organizations to use personnel services of the juvenile justice system. The bill gives DJJ the authority to permit a direct support organization to use personnel services. Personnel services include full-time or part-time personnel, as well as payroll processing services.

One-Time Startup Funding for Juvenile Justice Purposes

The bill changes the term "one-time startup" to "repair and maintenance" throughout s. 985.69, F.S. This allows these funds to be used for the continuing repair and maintenance of DJJ facilities.

¹⁰⁰ The CAR, in its current form, has been published by DJJ since 2006. It includes all of the information required to be reported under s. 985.632, F.S., as well as additional information. *See Comprehensive Accountability Reports*, <u>http://www.djj.state.fl.us/research/reports/car</u> (last visited on February 12, 2014).

Payment of Medical Expenses for Detained Youth (Section 33)

The bill codifies the language contained in the implementing bill for the 2013-2014 General Appropriations Act. Specifically, the bill provides that if there is no contract between DJJ and the hospital or provider providing health care services (services) at a hospital, payments to a provider may not exceed 110 percent of the Medicare allowable rate for any services provided. DJJ may continue to make payments for services to a provider at the current contracted rates through the current term of an executed contract.¹⁰¹ However, once that contract expires, payments may not exceed 110 percent of the Medicare allowable rate.

If a contract is executed on or after July 1, 2014, payments to providers for services may not exceed 110 percent of the Medicare allowable rate, unless the services are performed at a hospital that reports a negative operating margin for the previous fiscal year to the AHCA through hospital-audited financial data. In that instance, DJJ may pay up to 125 percent of the Medicare allowable rate.

Repeal of Provisions

The bill removes obsolete provisions, including definitions in ch. 985, F.S., relating to dependency proceedings. Dependency proceedings are within the jurisdiction of the DCF and are addressed in ch. 39, F.S.

The bill repeals s. 945.75, F.S., relating to state correctional facility tours by juvenile offenders that violate federal law. This repeal will prevent the federal funding allocated to state juvenile justice programs from being compromised.

Effective Date

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰¹ The bill allows for contracts to be renewed during the 2013-2014 fiscal year.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Families currently financially unable to access various services may have increased access to services, such as tutoring and counseling, as a result of the establishment of evening reporting centers.

Children currently subject to placement in secure detention for technical violations of probation may not be required to go into secure detention because the bill creates an alternative consequence option to handle noncompliance with the technical conditions of probation. This could assist these children with maintaining employment they currently possess.

C. Government Sector Impact:

Department of Juvenile Justice

The bill caps the maximum bed number for all residential facilities at 90 beds, instead of the maximum bed number of 165 in current law. The DJJ currently has two residential facilities over the 90 bed limit, Riverside Academy which has 165 beds and Avon Park Youth Academy which has 144 beds.¹⁰² The DJJ reports the procurement process is already underway to replace the beds at other facilities.¹⁰³

The bill amends s. 985.25, F.S., to require any child taken into custody on three or more separate occasions within a 60-day period to be placed in secure detention care until the detention hearing. The DJJ reports that 1,500 youth met this criteria in the last fiscal year, at a cost (clothing and food) per youth of \$5.16 per day. This will be an estimated increased cost of \$7,740 a year. The number could vary depending on how many nights each youth stays at the detention center. The DJJ indicates that they will absorb increased costs within existing resources.¹⁰⁴

The bill allows DJJ to pay expenses in support of innovative programs and activities that address identified needs and the well-being of children in the DJJ's care or under its supervision. These will be new expenses that the department is currently not paying. The DJJ indicates that these new expenses will be funded within existing resources.¹⁰⁵

¹⁰² Electronic mail from Jon Menendez, dated February 10, 2014 (on file with the Senate Judiciary Committee).

 $^{^{103}}$ Id

¹⁰⁴ DJJ, 2014 DJJ Bill Analysis for SB 700.

¹⁰⁵ Electronic mail from Jon Menendez, dated February 12, 2014 (on file with the Senate Judiciary Committee).

The bill allows DJJ to permit direct support organizations to use DJJ personnel services, which may have a fiscal impact on DJJ. However, DJJ indicates that any new expenses will be funded within existing resources.¹⁰⁶

The bill adds new detention criteria which may result in some children being held in secure detention who would not otherwise have been detained, or being detained for longer periods of time. This may have an indeterminate negative fiscal impact on local government expenditures.

The DJJ may realize a positive fiscal impact from reduced recidivism rates.

Office of State Courts Administrator (OSCA)

The OSCA indicates that only a few provisions of the bill will affect court operations:

- Requiring the court to hold a hearing and ensure due process for juvenile offenders in direct contempt;
- Requiring the court to provide a release date offenders currently in detention; and
- Authorizing the courts to place children in alternative consequence programs for technical violations of probation.

Although OSCA cannot accurately determine fiscal impact due to the unavailability of data needed to quantifiably establish the increase in judicial workload, OSCA indicates that they expect to be able to absorb additional workload with existing resources.¹⁰⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.01, 985.02, 985.03, 985.0301, 985.037, 985.045, 985.11, 985.14, 985.145, 985.24, 985.245, 985.25, 985.26, 985.265, 985.27, 985.275, 985.433, 985.435, 985.439, 985.441, 985.46, 985.461, 985.481, 985.4815, 985.601, 985.632, 985.644, 985.66, 985.664, 985.672, 985.682, 985.69, 985.701, 985.721, 943.0582, and 121.0515.

This bill creates the following sections of the Florida Statutes: 985.17, 985.6441, and 985.702.

¹⁰⁶ Id.

¹⁰⁷ Office of the State Courts Administrator, 2014 Judicial Impact Statement for SB 700 (February 25, 2014) (on file with the Senate Judiciary Committee).

This bill repeals the following sections of the Florida Statutes: 985.105, 985.605, 985.606, 985.61, 985.694, and 945.75.

IX. Additional Information:

A. Committee Substitute – Statement of 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.

LEGISLATIVE ACTION

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Senate

House

The Committee on Judiciary (Bradley) recommended the following:
Senate Amendment (with title amendment)
Delete lines 656 - 2326
and insert:
provided in s. 984.03 means a family that has a child for whom
there is no pending investigation into an allegation of abuse,
neglect, or abandonment or no current supervision by the
department or the Department of Children and Family Services for
an adjudication of dependency or delinquency. The child must
also have been referred to a law enforcement agency or the
department for:

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12	(a) Running away from parents or legal custodians;
13	(b) Persistently disobeying reasonable and lawful demands
14	of parents or legal custodians, and being beyond their control;
15	or
16	(c) Habitual truancy from school.
17	(24) "Foster care" means care provided a child in a foster
18	family or boarding home, group home, agency boarding home, child
19	care institution, or any combination thereof.
20	(25) "Habitually truant" means that:
21	(a) The child has 15 unexcused absences within 90 calendar
22	days with or without the knowledge or justifiable consent of the
23	child's parent or legal guardian, is subject to compulsory
24	school attendance under s. 1003.21(1) and (2)(a), and is not
25	exempt under s. 1003.21(3), s. 1003.24, or any other exemptions
26	specified by law or the rules of the State Board of Education.
27	(b) Escalating activities to determine the cause, and to
28	attempt the remediation, of the child's truant behavior under
29	ss. 1003.26 and 1003.27 have been completed.
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31	If a child who is subject to compulsory school attendance is
32	responsive to the interventions described in ss. 1003.26 and
33	1003.27 and has completed the necessary requirements to pass the
34	current grade as indicated in the district pupil progression
35	plan, the child shall not be determined to be habitually truant
36	and shall be passed. If a child within the compulsory school
37	attendance age has 15 unexcused absences within 90 calendar days
38	or fails to enroll in school, the state attorney may file a
39	child-in-need-of-services petition. Before filing a petition,
40	the child must be referred to the appropriate agency for

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41 evaluation. After consulting with the evaluating agency, the 42 state attorney may elect to file a child-in-need-of-services 43 petition.

44 (c) A school representative, designated according to school board policy, and a juvenile probation officer of the department 45 have jointly investigated the truancy problem or, if that was 46 47 not feasible, have performed separate investigations to identify conditions that could be contributing to the truant behavior; 48 and if, after a joint staffing of the case to determine the 49 50 necessity for services, such services were determined to be 51 needed, the persons who performed the investigations met jointly 52 with the family and child to discuss any referral to appropriate community agencies for economic services, family or individual 53 54 counseling, or other services required to remedy the conditions 55 that are contributing to the truant behavior.

56 (d) The failure or refusal of the parent or legal quardian 57 or the child to participate, or make a good faith effort to participate, in the activities prescribed to remedy the truant 58 59 behavior, or the failure or refusal of the child to return to school after participation in activities required by this 60 subsection, or the failure of the child to stop the truant 61 62 behavior after the school administration and the department have 63 worked with the child as described in s. 1003.27(3) shall be 64 handled as prescribed in s. 1003.27.

65 (26) "Halfway house" means a community-based residential 66 program for 10 or more committed delinquents at the moderate-67 risk commitment level which is operated or contracted by the 68 department.

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(24) (27) "Intake" means the initial acceptance and

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70 screening by the department or juvenile assessment center 71 personnel of a complaint or a law enforcement report or probable 72 cause affidavit of delinquency, family in need of services, or 73 child in need of services to determine the recommendation to be 74 taken in the best interests of the child, the family, and the 75 community. The emphasis of intake is on diversion and the least restrictive available services and. Consequently, intake 76 77 includes such alternatives such as:

(a) The disposition of the complaint, report, or probable
cause affidavit without court or public agency action or
judicial handling, if when appropriate.

(b) The referral of the child to another public or private agency, if when appropriate.

(c) The recommendation by the <u>department</u> juvenile probation officer of judicial handling, if when appropriate and warranted.

(25) (28) "Judge" means the circuit judge exercising jurisdiction pursuant to this chapter.

87 (26) (29) "Juvenile justice continuum" includes, but is not 88 limited to, delinquency prevention programs and services designed for the purpose of preventing or reducing delinquent 89 90 acts, including criminal activity by criminal gangs, and 91 juvenile arrests, as well as programs and services targeted at 92 children who have committed delinquent acts $_{\tau}$ and children who have previously been committed to residential treatment programs 93 94 for delinquents. The term includes children-in-need-of-services 95 and families-in-need-of-services programs under chapter 984; 96 conditional release; substance abuse and mental health programs; 97 educational and career programs; recreational programs; community services programs; community service work programs; 98



99 mother-infant programs; and alternative dispute resolution 100 programs serving children at risk of delinquency and their 101 families, whether offered or delivered by state or local 102 governmental entities, public or private for-profit or not-for-103 profit organizations, or religious or charitable organizations.

(27) (30) "Juvenile probation officer" means the authorized agent of the department who performs the intake, case management, or supervision functions.

(28) (31) "Legal custody or guardian" means a legal status created by court order or letter of guardianship which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, train, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

(29) (32) "Licensed child-caring agency" means a person, society, association, or agency licensed by the Department of Children and <u>Families</u> Family Services to care for, receive, and board children.

(30) (33) "Licensed health care professional" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.

(31) (34) "Likely to injure oneself" means that, as evidenced by violent or other actively self-destructive behavior, it is more likely than not that within a 24-hour period the child will attempt to commit suicide or inflict serious bodily harm on himself or herself.



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(32)(35) "Likely to injure others" means that it is more likely than not that within a 24-hour period the child will inflict serious and unjustified bodily harm on another person.

(33) (36) "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decisionmaking authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

<u>(34)</u> (37) "Mother-infant program" means a residential program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents, which is operated or contracted by the department. A motherinfant program facility must be licensed as a child care facility under s. 402.308 and must provide the services and support necessary to enable each juvenile mother committed to the facility to provide for the needs of her <u>infant</u> infants who, upon agreement of the mother, may accompany her in the program.

(35)(38) "Necessary medical treatment" means care that which is necessary within a reasonable degree of medical certainty to prevent the deterioration of a child's condition or to alleviate immediate pain of a child.

(36) (39) "Next of kin" means an adult relative of a child who is the child's brother, sister, grandparent, aunt, uncle, or first cousin.

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157 (37) (40) "Ordinary medical care" means medical procedures 158 that are administered or performed on a routine basis and includes, but is include, but are not limited to, inoculations, 159 160 physical examinations, remedial treatment for minor illnesses 161 and injuries, preventive services, medication management, 162 chronic disease detection and treatment, and other medical 163 procedures that are administered or performed on a routine basis 164 and that do not involve hospitalization, surgery, the use of 165 general anesthesia, or the provision of psychotropic 166 medications.

(38) (41) "Parent" means a woman who gives birth to a child 168 and a man whose consent to the adoption of the child would be 169 required under s. 63.062(1). If a child has been legally adopted, the term "parent" means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to a the child has been legally 173 terminated_{τ} or an alleged or prospective parent_{τ} unless the parental status falls within the terms of either s. 39.503(1) or 175 s. 63.062(1).

(39) (42) "Preliminary screening" means the gathering of preliminary information to be used in determining a child's need 178 for further evaluation or assessment or for referral for other 179 substance abuse services through means such as psychosocial interviews, + urine and breathalyzer screenings, + and reviews of available educational, delinquency, and dependency records of 182 the child.

(40) "Prevention" means programs, strategies, initiatives, 183 184 and networks designed to keep children from making initial or further contact with the juvenile justice system. 185

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186 (43) "Preventive services" means social services and other 187 supportive and rehabilitative services provided to the parent of 188 the child, the legal guardian of the child, or the custodian of 189 the child and to the child for the purpose of averting the 190 removal of the child from the home or disruption of a family 191 which will or could result in the placement of a child in foster 192 care. Social services and other supportive and rehabilitative 193 services shall promote the child's need for a safe, continuous, 194 stable living environment and shall promote family autonomy and 195 shall strengthen family life as the first priority whenever 196 possible.

197 (41) (44) "Probation" means the legal status of probation 198 created by law and court order in cases involving a child who 199 has been found to have committed a delinquent act. Probation is 200 an individualized program in which the freedom of the child is 201 limited and the child is restricted to noninstitutional quarters 202 or restricted to the child's home in lieu of commitment to the 203 custody of the department. Youth on probation may be assessed 204 and classified for placement in day-treatment probation programs 205 designed for youth who represent a minimum risk to themselves 206 and public safety and who do not require placement and services 207 in a residential setting.

208 <u>(42) (45)</u> "Relative" means a grandparent, great-grandparent, 209 sibling, first cousin, aunt, uncle, great-aunt, great-uncle, 210 niece, or nephew, whether related by the whole or half blood, by 211 affinity, or by adoption. The term does not include a 212 stepparent.

213 <u>(43)</u> (46) "Restrictiveness level" means the level of 214 programming and security provided by programs that service the



215 supervision, custody, care, and treatment needs of committed 216 children. Sections 985.601(10) and 985.721 apply to children 217 placed in programs at any residential commitment level. The 218 restrictiveness levels of commitment are as follows:

219 (a) Minimum-risk nonresidential.-Programs or program models 220 at this commitment level work with youth who remain in the 221 community and participate at least 5 days per week in a day-222 treatment day treatment program. Youth assessed and classified for programs at this commitment level represent a minimum risk 223 224 to themselves and public safety and do not require placement and 225 services in residential settings. Youth in this level have full 226 access to, and reside in, the community. Youth who have been 227 found to have committed delinquent acts that involve firearms, 228 that are sexual offenses, or that would be life felonies or 229 first-degree first degree felonies if committed by an adult may 230 not be committed to a program at this level.

231 (b) Low-risk residential.-Programs or program models at 232 this commitment level are residential but may allow youth to 233 have unsupervised access to the community. Residential 234 facilities shall have no more than 165 beds each, including 235 campus-style programs, unless those campus-style programs 236 include more than one level of restrictiveness, provide 237 multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately 2.38 239 in distinct locations on the same property. Youth assessed and 240 classified for placement in programs at this commitment level 241 represent a low risk to themselves and public safety but do 242 require placement and services in residential settings. Children 243 who have been found to have committed delinquent acts that

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244 involve firearms, delinquent acts that are sexual offenses, or 245 delinquent acts that would be life felonies or first degree 246 felonies if committed by an adult shall not be committed to a 247 program at this level.

248 (b) (c) Nonsecure Moderate-risk residential.-Programs or 249 program models at this commitment level are residential but may 250 allow youth to have supervised access to the community. 251 Facilities at this commitment level are either environmentally 252 secure or τ staff secure, or are hardware secure hardware-secure 253 with walls, fencing, or locking doors. Residential facilities at 254 this commitment level may shall have up to 90 no more than 165 255 beds each, including campus-style programs, unless those campus-256 style programs include more than one level of restrictiveness, 257 provide multilevel education and treatment program programs 258 using different treatment protocols $_{\tau}$ and have facilities that 259 coexist separately in distinct locations on the same property. 260 Facilities at this commitment level shall provide 24-hour awake 261 supervision, custody, care, and treatment of residents. Youth 262 assessed and classified for placement in programs at this 263 commitment level represent a low or moderate risk to public 264 safety and require close supervision. The staff at a facility at 265 this commitment level may seclude a child who is a physical 266 threat to himself, or herself, or others. Mechanical restraint 2.67 may also be used when necessary.

268 <u>(c) (d)</u> High-risk residential.-Programs or program models at 269 this commitment level are residential and do not allow youth to 270 have access to the community, except that temporary release 271 providing community access for up to 72 continuous hours may be 272 approved by a court for a youth who has made successful progress

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273 in his or her program so that in order for the youth may respond 274 to attend a family emergency or, during the final 60 days of his 275 or her placement, to visit his or her home, enroll in school or 276 a career and technical education vocational program, complete a 277 job interview, or participate in a community service project. 278 High-risk residential facilities are hardware secure hardware-279 secure with perimeter fencing and locking doors. Residential 280 facilities at this commitment level may shall have up to 90 no more than 165 beds each, including campus-style programs, unless 2.81 282 those campus-style programs include more than one level of 283 restrictiveness, provide multilevel education and treatment 284 program programs using different treatment protocols $_{ au}$ and have 285 facilities that coexist separately in distinct locations on the 286 same property. Facilities at this commitment level shall provide 287 24-hour awake supervision, custody, care, and treatment of 288 residents. Youth assessed and classified for this level of 289 placement require close supervision in a structured residential 290 setting. Placement in programs at this level is prompted by a 291 concern for public safety which that outweighs placement in 292 programs at lower commitment levels. The staff at a facility at 293 this commitment level may seclude a child who is a physical threat to himself, or herself, or others. Mechanical restraint 294 295 may also be used when necessary. The facility shall may provide for single cell occupancy, except that youth may be housed 296 297 together during prerelease transition.

298 <u>(d) (e)</u> Maximum-risk residential.-Programs or program models 299 at this commitment level include juvenile correctional 300 facilities and juvenile prisons. The programs <u>at this commitment</u> 301 <u>level</u> are long-term residential and do not allow youth to have

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access to the community. Facilities at this commitment level are 302 303 maximum-custody and hardware secure, hardware-secure with perimeter security fencing and locking doors. Residential 304 305 facilities at this commitment level may shall have up to 90 no 306 more than 165 beds each, including campus-style programs, unless 307 those campus-style programs include more than one level of restrictiveness, provide multilevel education and treatment 308 309 program programs using different treatment protocols, and have 310 facilities that coexist separately in distinct locations on the same property. Facilities at this commitment level shall provide 311 312 24-hour awake supervision, custody, care, and treatment of 313 residents. The staff at a facility at this commitment level may 314 seclude a child who is a physical threat to himself, or herself, 315 or others. Mechanical restraint may also be used when necessary. 316 Facilities at this commitment level The facility shall provide for single cell occupancy, except that youth may be housed 317 318 together during prerelease transition. Youth assessed and 319 classified for this level of placement require close supervision 320 in a maximum security residential setting. Placement in a 321 program at this level is prompted by a demonstrated need to 322 protect the public.

323 <u>(44)</u> (47) "Respite" means a placement that is available for 324 the care, custody, and placement of a youth charged with 325 domestic violence as an alternative to secure detention or for 326 placement of a youth when a shelter bed for a child in need of 327 services or a family in need of services is unavailable.

328 <u>(45) (48)</u> "Secure detention center or facility" means a 329 physically restricting facility for the temporary care of 330 children, pending adjudication, disposition, or placement.

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331 (46) (49) "Shelter" means a place for the temporary care of 332 a child who is alleged to be or who has been found to be 333 delinguent. 334 (50) "Shelter hearing" means a hearing provided for under 335 s. 984.14 in family-in-need-of-services cases or child-in-need-336 of-services cases. (51) "Staff-secure shelter" means a facility in which a 337 child is supervised 24 hours a day by staff members who are 338 awake while on duty. The facility is for the temporary care and 339 340 assessment of a child who has been found to be dependent, who 341 has violated a court order and been found in contempt of court, 342 or whom the Department of Children and Family Services is unable 343 to properly assess or place for assistance within the continuum 344 of services provided for dependent children. 345 (47) (52) "Substance abuse" means using, without medical 346 reason, any psychoactive or mood-altering drug, including 347 alcohol, in such a manner as to induce impairment resulting in 348 dysfunctional social behavior. (48) (53) "Taken into custody" means the status of a child 349 350 immediately when temporary physical control over the child is 351 attained by a person authorized by law, pending the child's

351 attained by a person authorized by law, pending the child's 352 release, detention, placement, or other disposition as 353 authorized by law.

354 <u>(49) (54)</u> "Temporary legal custody" means the relationship 355 that a juvenile court creates between a child and an adult 356 relative of the child, adult nonrelative approved by the court, 357 or other person until a more permanent arrangement is ordered. 358 Temporary legal custody confers upon the custodian the right to 359 have temporary physical custody of the child and the right and



360 duty to protect, train, and discipline the child and to provide 361 the child with food, shelter, and education, and ordinary 362 medical, dental, psychiatric, and psychological care, unless 363 these rights and duties are otherwise enlarged or limited by the 364 court order establishing the temporary legal custody 365 relationship.

366 (50) (55) "Temporary release" means the terms and conditions 367 under which a child is temporarily released from a residential 368 commitment facility or allowed home visits. If the temporary 369 release is from a nonsecure moderate-risk residential facility, 370 a high-risk residential facility, or a maximum-risk residential 371 facility, the terms and conditions of the temporary release must 372 be approved by the child, the court, and the facility. The term 373 includes periods during which the child is supervised pursuant 374 to a conditional release program or a period during which the 375 child is supervised by a juvenile probation officer or other 376 nonresidential staff of the department or staff employed by an entity under contract with the department. 377

(51)(56) "Transition-to-adulthood services" means services that are provided for youth in the custody of the department or under the supervision of the department and that have the objective of instilling the knowledge, skills, and aptitudes essential to a socially integrated, self-supporting adult life. The services may include, but are not limited to:

(a) Assessment of the youth's ability and readiness for adult life.

386 (b) A plan for the youth to acquire the knowledge,
387 information, and counseling necessary to make a successful
388 transition to adulthood.

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389 (c) Services that have proven effective toward achieving 390 the transition to adulthood. 391 <u>(52) "Trauma-informed care" means the provision of services</u> 392 to children with a history of trauma in a manner that recognizes

the symptoms and acknowledges the role the trauma has played in the child's life. Trauma may include, but is not limited to, community and school violence, physical or sexual abuse, neglect, medical difficulties, and domestic violence.

(53) (57) "Violation of law" or "delinquent act" means a violation of any law of this state, the United States, or any other state which is a misdemeanor or a felony or a violation of a county or municipal ordinance which would be punishable by incarceration if the violation were committed by an adult.

(54) (58) "Waiver hearing" means a hearing provided for under s. 985.556(4).

Section 4. Subsections (4) and (5) of section 985.0301, Florida Statutes, are amended to read:

985.0301 Jurisdiction.-

(4) (a) Petitions alleging delinguency shall be filed in the 407 408 county where the delinquent act or violation of law occurred. τ 409 but The circuit court for that county may transfer the case to 410 the circuit court of the circuit in which the child resides or 411 will reside at the time of detention or placement for 412 dispositional purposes. A child who has been detained may shall 413 be transferred to the appropriate detention center or facility 414 in the circuit in which the child resides or will reside at the 415 time of detention or other placement directed by the receiving 416 court.

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(b) The jurisdiction to be exercised by the court when a

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418 child is taken into custody before the filing of a petition 419 under subsection (2) shall be exercised by the circuit court for 420 the county in which the child is taken into custody, and such 421 court has which court shall have personal jurisdiction of the 422 child and the child's parent or legal guardian. If the child has 423 been detained, upon the filing of a petition in the appropriate 424 circuit court, the court that is exercising initial personal 425 jurisdiction of the person of the child shall, if the child has been detained, immediately order the child to be transferred to 42.6 427 the detention center or facility or other placement as ordered 428 by the court having subject matter jurisdiction of the case.

429 (5) (a) Notwithstanding s. 743.07, ss. 743.07, 985.43, 430 985.433, 985.435, 985.439, and 985.441, and except as provided 431 in paragraphs (b) and (c) ss. 985.461 and 985.465 and paragraph 432 (f), when the jurisdiction of a any child who is alleged to have 433 committed a delinquent act or violation of law is obtained, the 434 court retains shall retain jurisdiction to dispose the case, 435 unless relinquished by its order, until the child reaches 19 436 years of age, with the same power over the child which the court 437 had before the child became an adult. For the purposes of s. 438 985.461, the court may retain jurisdiction for an additional 365 439 days following the child's 19th birthday if the child is 440 participating in transition-to-adulthood services. The 441 additional services do not extend involuntary court-sanctioned 442 residential commitment and therefore require voluntary 443 participation by the affected youth. 444 (b) Unless relinquished by its own order, the court retains

445 jurisdiction over a child on probation until the child reaches
446 <u>19 years of age</u> Notwithstanding ss. 743.07 and 985.455(3), the

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447 term of any order placing a child in a probation program must be 448 until the child's 19th birthday unless he or she is released by 449 the court on the motion of an interested party or on his or her 450 own motion.

(c) Unless relinquished by its own order, the court retains jurisdiction over a child committed to the department until the child reaches 21 years of age, specifically for the purpose of allowing the child to complete the department's commitment program, including conditional release supervision.

(d) The court retains jurisdiction over a juvenile sex offender as defined in s. 985.475 who has been placed in a community-based treatment alternative program with supervision or in a program or facility for juvenile sex offenders pursuant to s. 985.48 until the juvenile sex offender reaches 21 years of age, specifically for the purpose of completing the program.

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

470 (d) The court may retain jurisdiction over a child 471 committed to the department for placement in a juvenile prison 472 or in a high-risk or maximum-risk residential commitment program 473 to allow the child to participate in a juvenile conditional 474 release program pursuant to s. 985.46. The jurisdiction of the 475 court may not be retained after the child's 22nd birthday.

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476 However, if the child is not successful in the conditional 477 release program, the department may use the transfer procedure 478 under s. 985.441(4).

479 (e) The court may retain jurisdiction over a child 480 committed to the department for placement in an intensive residential treatment program for 10-year-old to 13-year-old 481 482 offenders, in the residential commitment program in a juvenile 483 prison or in a residential sex offender program until the child 484 reaches the age of 21. If the court exercises this jurisdiction 485 retention, it shall do so solely for the purpose of the child 486 completing the intensive residential treatment program for 10-487 year-old to 13-year-old offenders, in the residential commitment 488 program in a juvenile prison, or in a residential sex offender 489 program. Such jurisdiction retention does not apply for other 490 programs, other purposes, or new offenses.

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

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

500 <u>(e)(h)</u> The court may retain jurisdiction over a child and 501 the child's parent or legal guardian whom the court has ordered 502 to pay restitution until the restitution order is satisfied. To 503 retain jurisdiction, the court shall enter a restitution order, 504 which is separate from any disposition or order of commitment,

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505 on or before prior to the date that the court's jurisdiction 506 would cease under this section. The contents of the restitution order are shall be limited to the child's name and address, the 507 508 name and address of the parent or legal guardian, the name and 509 address of the payee, the case number, the date and amount of 510 restitution ordered, any amount of restitution paid, the amount 511 of restitution due and owing, and a notation that costs, 512 interest, penalties, and attorney fees may also be due and 513 owing. The terms of the restitution order are subject to s. 514 775.089(5).

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

Section 5. Subsections (2) and (4) of section 985.037, 519 Florida Statutes, are amended to read:

985.037 Punishment for contempt of court; alternative sanctions.-

522 (2) PLACEMENT IN A SECURE DETENTION FACILITY.-A child may 523 be placed in a secure detention facility for purposes of 524 punishment for contempt of court if alternative sanctions are 525 unavailable or inappropriate τ or if the child has already been 526 ordered to serve an alternative sanction but failed to comply 527 with the sanction. A delinquent child who has been held in 528 direct or indirect contempt may be placed in a secure detention 529 facility for up to not to exceed 5 days for a first offense and 530 up to not to exceed 15 days for a second or subsequent offense. 531 (4) CONTEMPT OF COURT SANCTIONS; PROCEDURE AND DUE 532 PROCESS.-

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(a) If a child is charged with direct contempt of court,

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534 including traffic court, the court may impose an authorized 535 sanction immediately. The court must hold a hearing to determine 536 if the child committed direct contempt. Due process must be 537 afforded to the child during such hearing. 538 (b) If a child is charged with indirect contempt of court, 539 the court must hold a hearing within 24 hours to determine 540 whether the child committed indirect contempt of a valid court 541 order. At the hearing, the following due process rights must be 542 provided to the child: 543 1. Right to a copy of the order to show cause alleging facts supporting the contempt charge. 544 545 2. Right to an explanation of the nature and the 546 consequences of the proceedings. 547 3. Right to legal counsel and the right to have legal 548 counsel appointed by the court if the juvenile is indigent, 549 under s. 985.033. 550 4. Right to confront witnesses. 551 5. Right to present witnesses. 552 6. Right to have a transcript or record of the proceeding. 553 7. Right to appeal to an appropriate court. 554 555 The child's parent or quardian may address the court regarding 556 the due process rights of the child. Upon motion by the defense 557 or state attorney, the court shall review the placement of the 558 child every 72 hours to determine whether it is appropriate for 559 the child to remain in the facility. 560 (c) The court may not order that a child be placed in a secure detention facility as for punishment for contempt unless 561 562 the court determines that an alternative sanction is

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563 inappropriate or unavailable or that the child was initially 564 ordered to an alternative sanction and did not comply with the 565 alternative sanction. The court is encouraged to order a child 566 to perform community service, up to the maximum number of hours, 567 <u>if where appropriate before ordering that the child be placed in</u> 568 a secure detention facility as punishment for contempt of court.

569 (d) In addition to any other sanction imposed under this 570 section, the court may direct the Department of Highway Safety 571 and Motor Vehicles to withhold issuance of, or suspend, a 572 child's driver driver's license or driving privilege. The court 573 may order that a child's driver driver's license or driving 574 privilege be withheld or suspended for up to 1 year for a first 575 offense of contempt and up to 2 years for a second or subsequent 576 offense. If the child's driver driver's license or driving 577 privilege is suspended or revoked for any reason at the time the 578 sanction for contempt is imposed, the court shall extend the 579 period of suspension or revocation by the additional period 580 ordered under this paragraph. If the child's driver driver's license is being withheld at the time the sanction for contempt 581 582 is imposed, the period of suspension or revocation ordered under 583 this paragraph shall begin on the date on which the child is 584 otherwise eligible to drive.

Section 6. <u>Section 985.105</u>, Florida Statutes, is repealed. Section 7. Subsection (1) of section 985.11, Florida Statutes, is amended to read:

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985.11 Fingerprinting and photographing.-

(1) (a) A child who is charged with or found to have committed an offense that would be a felony if committed by an adult shall be fingerprinted, and the fingerprints <u>shall</u> must be

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592 submitted to the Department of Law Enforcement as provided in s. 593 943.051(3)(a). 594 (b) Unless the child is issued a civil citation or participating in a similar diversion program pursuant to s. 595 596 985.12, a child who is charged with or found to have committed 597 one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law 598 599 Enforcement as provided in s. 943.051(3)(b): 600 1. Assault_{τ} as defined in s. 784.011. 601 2. Battery, as defined in s. 784.03. 3. Carrying a concealed weapon $_{\tau}$ as defined in s. 790.01(1). 602 603 4. Unlawful use of destructive devices or bombs $_{\tau}$ as defined in s. 790.1615(1). 604 605 5. Neglect of a child_{τ} as defined in s. 827.03(1)(e). 606 6. Assault on a law enforcement officer, a firefighter, or 607 other specified officers, as defined in s. 784.07(2) (a). 608 7. Open carrying of a weapon τ as defined in s. 790.053. 609 8. Exposure of sexual organs τ as defined in s. 800.03. 610 9. Unlawful possession of a firearm_{τ} as defined in s. 611 790.22(5). 612 10. Petit theft_{τ} as defined in s. 812.014. 613 11. Cruelty to animals, as defined in s. 828.12(1). 614 12. Arson_{τ} resulting in bodily harm to a firefighter_{τ} as defined in s. 806.031(1). 615 616 13. Unlawful possession or discharge of a weapon or firearm 617 at a school-sponsored event or on school property as defined in 618 s. 790.115. 619 620 A law enforcement agency may fingerprint and photograph a child



621 taken into custody upon probable cause that such child has 622 committed any other violation of law, as the agency deems 623 appropriate. Such fingerprint records and photographs shall be 624 retained by the law enforcement agency in a separate file, and 625 these records and all copies thereof must be marked "Juvenile 626 Confidential." These records are not available for public 627 disclosure and inspection under s. 119.07(1) except as provided 628 in ss. 943.053 and 985.04(2), but are shall be available to other law enforcement agencies, criminal justice agencies, state 62.9 630 attorneys, the courts, the child, the parents or legal 631 custodians of the child, their attorneys, and any other person 632 authorized by the court to have access to such records. In 633 addition, such records may be submitted to the Department of Law 634 Enforcement for inclusion in the state criminal history records 635 and used by criminal justice agencies for criminal justice 636 purposes. These records may, in the discretion of the court, be 637 open to inspection by anyone upon a showing of cause. The 638 fingerprint and photograph records shall be produced in the 639 court whenever directed by the court. Any photograph taken 640 pursuant to this section may be shown by a law enforcement 641 officer to any victim or witness of a crime for the purpose of 642 identifying the person who committed such crime.

(c) The court <u>is shall be</u> responsible for the
fingerprinting of <u>a</u> any child at the disposition hearing if the
child has been adjudicated or had adjudication withheld for any
felony in the case currently before the court.

647 Section 8. Subsection (2) of section 985.14, Florida648 Statutes, is amended to read:

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985.14 Intake and case management system.-

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650 (2) The intake process shall be performed by the department 651 or juvenile assessment center personnel through a case management system. The purpose of the intake process is to 652 653 assess the child's needs and risks and to determine the most 654 appropriate treatment plan and setting for the child's 655 programmatic needs and risks. The intake process consists of an 656 initial assessment and may be followed by a full mental health, 657 substance abuse, or psychosexual evaluation. The intake process 658 shall result in choosing the most appropriate services through a 659 balancing of the interests and needs of the child with those of 660 the family and the community public. The juvenile probation 661 officer shall make be responsible for making informed decisions 662 and recommendations to other agencies, the state attorney, and 663 the courts so that the child and family may receive the least 664 intrusive service alternative throughout the judicial process. 665 The department shall establish uniform procedures through which 666 for the juvenile probation officer may to provide a preliminary 667 screening of the child and family for substance abuse and mental 668 health services before prior to the filing of a petition or as 669 soon as possible thereafter and before prior to a disposition 670 hearing.

671 Section 9. Section 985.145, Florida Statutes, is amended to 672 read:

673 985.145 Responsibilities of <u>the department</u> juvenile
 674 probation officer during intake; screenings and assessments.

(1) The <u>department</u> juvenile probation officer shall serve
as the primary case manager for the purpose of managing,
coordinating, and monitoring the services provided to the child.
Each program administrator within the Department of Children and

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679 <u>Families</u> Family Services shall cooperate with the primary case 680 manager in carrying out the duties and responsibilities 681 described in this section. In addition to duties specified in 682 other sections and through departmental rules, the <u>department</u> 683 assigned juvenile probation officer shall be responsible for the 684 following:

685 (a) Reviewing probable cause affidavit.-The department 686 juvenile probation officer shall make a preliminary 687 determination as to whether the report, affidavit, or complaint 688 is complete, consulting with the state attorney as may be necessary. A report, affidavit, or complaint alleging that a 689 690 child has committed a delinquent act or violation of law shall 691 be made to the intake office operating in the county in which 692 the child is found or in which the delinquent act or violation 693 of law occurred. Any person or agency having knowledge of the 694 facts may make such a written report, affidavit, or complaint 695 and shall furnish to the intake office facts sufficient to 696 establish the jurisdiction of the court and to support a finding 697 by the court that the child has committed a delinquent act or 698 violation of law.

699 (b) Notification concerning apparent insufficiencies in 700 probable cause affidavit.-In any case where the department 701 juvenile probation officer or the state attorney finds that the 702 report, affidavit, or complaint is insufficient by the standards 703 for a probable cause affidavit, the department juvenile 704 probation officer or state attorney shall return the report, 705 affidavit, or complaint, without delay, to the person or agency 706 originating the report, affidavit, or complaint or having 707 knowledge of the facts or to the appropriate law enforcement

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708 agency having investigative jurisdiction of the offense, and 709 shall request, and the person or agency shall promptly furnish, 710 additional information in order to comply with the standards for 711 a probable cause affidavit.

(c) Screening.-During the intake process, the department juvenile probation officer shall screen each child or shall cause each child to be screened in order to determine:

1. Appropriateness for release; referral to a diversionary 716 program, including, but not limited to, a teen court program; 717 referral for community arbitration; or referral to some other program or agency for the purpose of nonofficial or nonjudicial 719 handling.

2. The presence of medical, psychiatric, psychological, substance abuse, educational, or career and technical education vocational problems, or other conditions that may have caused the child to come to the attention of law enforcement or the department. The child shall also be screened to determine whether the child poses a danger to himself or herself or others in the community. The results of this screening shall be made available to the court and to court officers. In cases where such conditions are identified and a nonjudicial handling of the case is chosen, the department juvenile probation officer shall attempt to refer the child to a program or agency, together with all available and relevant assessment information concerning the child's precipitating condition.

733 (d) Completing risk assessment instrument.-The department 734 juvenile probation officer shall ensure that a risk assessment 735 instrument establishing the child's eligibility for detention 736 has been accurately completed and that the appropriate



737 recommendation was made to the court.

(e) *Rights.*—The <u>department</u> juvenile probation officer shall inquire as to whether the child understands his or her rights to counsel and against self-incrimination.

(f) Multidisciplinary assessment.—The <u>department</u> juvenile probation officer shall coordinate the multidisciplinary assessment when required, which includes the classification and placement process that determines the child's priority needs, risk classification, and treatment plan. <u>If When</u> sufficient evidence exists to warrant a comprehensive assessment and the child fails to voluntarily participate in the assessment efforts, the <u>department</u> juvenile probation officer shall inform the court of the need for the assessment and the refusal of the child to participate in such assessment. This assessment, classification, and placement process shall develop into the predisposition report.

(g) Comprehensive assessment. The juvenile probation officer, Pursuant to uniform procedures established by the department and upon determining that the report, affidavit, or complaint is complete, the department shall:

1. Perform the preliminary screening and make referrals for a comprehensive assessment regarding the child's need for substance abuse treatment services, mental health services, intellectual disability services, literacy services, or other educational or treatment services.

2. If indicated by the preliminary screening, provide for a comprehensive assessment of the child and family for substance abuse problems, using community-based licensed programs with clinical expertise and experience in the assessment of substance



abuse problems.

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3. If indicated by the preliminary screening, provide for a comprehensive assessment of the child and family for mental health problems, using community-based psychologists, psychiatrists, or other licensed mental health professionals who have clinical expertise and experience in the assessment of mental health problems.

(h) Referrals for services.—The <u>department</u> juvenile probation officer shall make recommendations for services and facilitate the delivery of those services to the child, including any mental health services, educational services, family counseling services, family assistance services, and substance abuse services.

779 (i) Recommendation concerning a petition.-Upon determining 780 that the report, affidavit, or complaint complies with the 781 standards of a probable cause affidavit and that the interests 782 of the child and the public will be best served, the department 783 juvenile probation officer may recommend that a delinquency 784 petition not be filed. If such a recommendation is made, the 785 department juvenile probation officer shall advise in writing 786 the person or agency making the report, affidavit, or complaint, 787 the victim, if any, and the law enforcement agency having 788 investigative jurisdiction over the offense of the 789 recommendation; the reasons therefor; and that the person or 790 agency may submit, within 10 days after the receipt of such 791 notice, the report, affidavit, or complaint to the state 792 attorney for special review. The state attorney, upon receiving 793 a request for special review, shall consider the facts presented 794 by the report, affidavit, or complaint $_{ au}$ and by the department

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795 juvenile probation officer who made the recommendation that no 796 petition be filed, before making a final decision as to whether 797 a petition or information should or should not be filed.

798 (j) Completing intake report.-Subject to the interagency 799 agreement authorized under this paragraph, the department the 800 juvenile probation officer for each case in which a child is 801 alleged to have committed a violation of law or delinquent act 802 and is not detained shall submit a written report to the state 803 attorney for each case in which a child is alleged to have 804 committed a violation of law or delinquent act and is not 805 detained. The report shall be submitted within 20 days after the 806 date the child is taken into custody and must include, including 807 the original police report, complaint, or affidavit, or a copy 808 thereof, and including a copy of the child's prior juvenile 809 record, within 20 days after the date the child is taken into 810 custody. In cases in which the child is in detention, the intake 811 office report must be submitted within 24 hours after the child 812 is placed into detention. The intake office report may include a 813 recommendation that a petition or information be filed or that 814 no petition or information be filed and may set forth reasons 815 for the recommendation. The state attorney and the department 816 may, on a district-by-district basis, enter into interagency 817 agreements denoting the cases that will require a recommendation 818 and those for which a recommendation is unnecessary.

819 (2) <u>Before</u> Prior to requesting that a delinquency petition 820 be filed or <u>before</u> prior to filing a dependency petition, the 821 <u>department</u> juvenile probation officer may request the parent or 822 legal guardian of the child to attend a course of instruction in 823 parenting skills, training in conflict resolution, and the

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824 practice of nonviolence; to accept counseling; or to receive 825 other assistance from any agency in the community which notifies the clerk of the court of the availability of its services. If 826 827 Where appropriate, the department juvenile probation officer 828 shall request both parents or guardians to receive such parental 829 assistance. The department juvenile probation officer may, in 830 determining whether to request that a delinguency petition be 831 filed, take into consideration the willingness of the parent or 832 legal guardian to comply with such request. The parent or 833 quardian must provide the department juvenile probation officer 834 with identifying information, including the parent's or 835 guardian's name, address, date of birth, social security number, 836 and driver driver's license number or identification card number 837 in order to comply with s. 985.039.

838 (3) If When indicated by the comprehensive assessment, the department is authorized to contract within appropriated funds 839 840 for services with a local nonprofit community mental health or 841 substance abuse agency licensed or authorized under chapter 394 842 or chapter 397 or other authorized nonprofit social service 843 agency providing related services. The determination of mental 844 health or substance abuse services shall be conducted in 845 coordination with existing programs providing mental health or 846 substance abuse services in conjunction with the intake office.

(4) Client information resulting from the screening and
evaluation shall be documented under rules of the department and
shall serve to assist the <u>department</u> juvenile probation officer
in providing the most appropriate services and recommendations
in the least intrusive manner. Such client information shall be
used in the multidisciplinary assessment and classification of

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the child, but such information, and any information obtained directly or indirectly through the assessment process, is inadmissible in court <u>before</u> prior to the disposition hearing, unless the child's written consent is obtained. At the disposition hearing, documented client information shall serve to assist the court in making the most appropriate custody, adjudicatory, and dispositional decision.

860 (5) If the screening and assessment indicate that the 861 interests of the child and the public will be best served, the 862 department juvenile probation officer, with the approval of the state attorney, may refer the child for care, diagnostic, and 863 864 evaluation services; substance abuse treatment services; mental 865 health services; intellectual disability services; a 866 diversionary, arbitration, or mediation program; community 867 service work; or other programs or treatment services 868 voluntarily accepted by the child and the child's parents or 869 legal quardian. If a child volunteers to participate in any work 870 program under this chapter or volunteers to work in a specified 871 state, county, municipal, or community service organization 872 supervised work program or to work for the victim, the child is 873 considered an employee of the state for the purposes of 874 liability. In determining the child's average weekly wage, 875 unless otherwise determined by a specific funding program, all 876 remuneration received from the employer is considered a 877 gratuity, and the child is not entitled to any benefits 878 otherwise payable under s. 440.15 regardless of whether the 879 child may be receiving wages and remuneration from other 880 employment with another employer and regardless of the child's 881 future wage-earning capacity.

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882	(6) The victim, if any, and the law enforcement agency that
883	investigated the offense shall be notified immediately by the
884	state attorney of the action taken under subsection (5).
885	Section 10. Section 985.17, Florida Statutes, is created to
886	read:
887	985.17 Prevention services
888	(1) Prevention services decrease recidivism by addressing
889	the needs of at-risk youth and their families, preventing
890	further involvement in the juvenile justice system, protecting
891	public safety, and facilitating successful reentry into the
892	community. To assist in decreasing recidivism, the department's
893	prevention services should strengthen protective factors, reduce
894	risk factors, and use tested and effective approaches.
895	(2) A primary focus of the department's prevention services
896	is to develop capacity for local communities to serve their
897	youth.
898	(a) The department shall engage faith-based and community-
899	based organizations to provide a full range of voluntary
900	programs and services to prevent and reduce juvenile
901	delinquency, including, but not limited to, chaplaincy services,
902	crisis intervention counseling, mentoring, and tutoring.
903	(b) The department shall establish volunteer coordinators
904	in each circuit and encourage the recruitment of volunteers to
905	serve as mentors for youth in department services.
906	(c) The department shall promote the Invest In Children
907	license plate developed pursuant to s. 320.08058(11) to help
908	fund programs and services to prevent juvenile delinquency. The
909	department shall allocate moneys for programs and services
910	within each county based on that county's proportionate share of

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12 <u>p</u> 13 14 <u>o</u> 15 <u>f</u>	he license plate annual use fee collected by the county ursuant to s. 320.08058(11). (3) The department's prevention services for youth at risk f becoming delinquent should focus on preventing initial or urther involvement in the juvenile justice system by including ervices such as literacy services, gender-specific programming, nd recreational and after-school services and should include
13 14 <u>o</u> 15 <u>f</u>	(3) The department's prevention services for youth at risk f becoming delinquent should focus on preventing initial or urther involvement in the juvenile justice system by including ervices such as literacy services, gender-specific programming,
14 <u>o</u> 15 <u>f</u>	f becoming delinquent should focus on preventing initial or urther involvement in the juvenile justice system by including ervices such as literacy services, gender-specific programming,
15 <u>f</u>	urther involvement in the juvenile justice system by including ervices such as literacy services, gender-specific programming,
	ervices such as literacy services, gender-specific programming,
7 a:	IN LECTEALIONAL AND ALLEL-SCHOOL SELVICES AND SHOULD INCLUDE
	argeted services to troubled, truant, ungovernable, abused,
t	rafficked, or runaway youth. To decrease the likelihood that a
Y	outh will commit a delinquent act, the department may provide
s	pecialized services addressing the strengthening of families,
j	ob training, and substance abuse.
	(4) In an effort to decrease the prevalence of
d	isproportionate minority representation in the juvenile justice
S	ystem, the department's prevention services should address the
m	ultiple needs of minority youth at risk of becoming delinquent.
	(5) The department shall expend funds related to prevention
S	ervices in a manner consistent with the policies expressed in
S	s. 984.02 and 985.01. The department shall expend such funds in
a	manner that maximizes accountability to the public and ensures
t	he documentation of outcomes.
	(a) As a condition of the receipt of state funds, entities
t	hat receive or use state moneys to fund prevention services
t	hrough contracts with the department or grants from any entity
<u>d</u>	ispersed by the department shall:
	1. Design the programs providing such services to further
0	ne or more of the following strategies:
	a. Encouraging youth to attend and succeed in school, which
m	ay include special assistance and tutoring to address

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940	deficiencies in academic performance and collecting outcome data
941	to reveal the number of days youth attended school while
942	participating in the program.
943	b. Engaging youth in productive and wholesome activities
944	during nonschool hours which build positive character, instill
945	positive values, and enhance educational experiences.
946	c. Encouraging youth to avoid the use of violence.
947	d. Assisting youth in acquiring the skills needed to find
948	meaningful employment, which may include assistance in finding a
949	suitable employer for the youth.
950	2. Provide the department with demographic information,
951	dates of services, and the type of interventions received by
952	each youth.
953	(b) The department shall monitor output and outcome
954	measures for each program strategy in paragraph (a) and include
955	them in the annual Comprehensive Accountability Report published
956	pursuant to s. 985.632.
957	(c) The department shall monitor all programs that receive
958	or use state moneys to fund juvenile delinquency prevention
959	services through contracts or grants with the department for
960	compliance with all provisions in the contracts or grants.
961	Section 11. Section 985.24, Florida Statutes, is amended to
962	read:
963	985.24 Use of detention; prohibitions
964	(1) All determinations and court orders regarding the use
965	of secure, nonsecure, or home detention care must shall be based
966	primarily upon findings that the child:
967	(a) Presents a substantial risk of not appearing at a
968	subsequent hearing;



969	(b) Presents a substantial risk of inflicting bodily harm
970	on others as evidenced by recent behavior, including the illegal
971	possession of a firearm;
972	(c) Presents a history of committing a property offense
973	before prior to adjudication, disposition, or placement;
974	(d) Has committed contempt of court by:
975	1. Intentionally disrupting the administration of the
976	court;
977	2. Intentionally disobeying a court order; or
978	3. Engaging in a punishable act or speech in the court's
979	presence which shows disrespect for the authority and dignity of
980	the court; or
981	(e) Requests protection from imminent bodily harm.
982	(2) A child alleged to have committed a delinquent act or
983	violation of law may not be placed into secure $\underline{\text{or}}_{\tau}$ nonsecure, or
984	home detention care for any of the following reasons:
985	(a) To allow a parent to avoid his or her legal
986	responsibility.
987	(b) To permit more convenient administrative access to the
988	child.
989	(c) To facilitate further interrogation or investigation.
990	(d) Due to a lack of more appropriate facilities.
991	(3) A child alleged to be dependent under chapter 39 may
992	not, under any circumstances, be placed into secure detention
993	care.
994	(4) The department may develop nonsecure, nonresidential
995	evening-reporting centers as an alternative to placing a child
996	in secure detention to serve children and families while
997	awaiting court hearings. Evening-reporting centers may be

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collocated with the juvenile assessment center. At a minimum,

999 evening-reporting centers shall be operated during the afternoon 1000 and evening hours and provide a highly structured program of 1001 supervision. Evening-reporting centers may also provide academic 1002 tutoring, counseling, family engagement programs, and other 1003 activities. (5) (4) The department shall continue to identify 1004 1005 alternatives to secure detention care and shall develop such 1006 alternatives and annually submit them to the Legislature for 1007 authorization and appropriation. Section 12. Paragraph (b) of subsection (2) and subsection 1008 1009 (4) of section 985.245, Florida Statutes, are amended to read: 1010 985.245 Risk assessment instrument.-1011 (2) 1012 (b) The risk assessment instrument, at a minimum, shall 1013 consider take into consideration, but need not be limited to, prior history of failure to appear, prior offenses, offenses 1014 1015 committed pending adjudication, any unlawful possession of a 1016 firearm, theft of a motor vehicle or possession of a stolen 1017 motor vehicle, and probation status at the time the child is 1018 taken into custody. The risk assessment instrument shall also 1019 consider take into consideration appropriate aggravating and 1020 mitigating circumstances, and shall be designed to target a 1021 narrower population of children than s. 985.255, and. The risk 1022 assessment instrument shall also include any information 1023 concerning the child's history of abuse and neglect. The risk 1024 assessment shall indicate whether detention care is warranted τ 1025 and, if detention care is warranted, whether the child should be 1026 placed into secure or_{τ} nonsecure, or home detention care.

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(4) If For a child who is under the supervision of the

department through probation, home detention, nonsecure

detention, conditional release, postcommitment probation, or

1030 commitment and who is charged with committing a new offense, the 1031 risk assessment instrument may be completed and scored based on 1032 the underlying charge for which the child was placed under the 1033 supervision of the department and the new offense. 1034 Section 13. Subsection (1) of section 985.25, Florida 1035 Statutes, is amended to read: 1036 985.25 Detention intake.-1037 (1) The department juvenile probation officer shall receive 1038 custody of a child who has been taken into custody from the law 1039 enforcement agency or court and shall review the facts in the 1040 law enforcement report or probable cause affidavit and make such 1041 further inquiry as may be necessary to determine whether 1042 detention care is appropriate required. 1043 (a) During the period of time from the taking of the child 1044 into custody to the date of the detention hearing, the initial 1045 decision as to the child's placement into secure detention care 1046 or, nonsecure detention care, or home detention care shall be made by the department juvenile probation officer under ss. 1047 985.24 and 985.245(1). 1048 1049 (b) The department juvenile probation officer shall base 1050 its the decision as to whether or not to place the child into 1051 secure detention care, home detention care, or nonsecure 1052 detention care on an assessment of risk in accordance with the 1053 risk assessment instrument and procedures developed by the 1054 department under s. 985.245. However, a child charged with possessing or discharging a firearm on school property in 1055

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1056 violation of s. 790.115 shall be placed in secure detention 1057 care. <u>A child who has been taken into custody on three or more</u> 1058 <u>separate occasions within a 60-day period shall be placed in</u> 1059 <u>secure detention care until the child's detention hearing.</u>

(c) If the <u>child's final score on the risk assessment</u> <u>instrument indicates that juvenile probation officer determines</u> that a child who is eligible for detention <u>care is appropriate</u>, <u>but the department otherwise determines he or she based upon the</u> <u>results of the risk assessment instrument</u> should be released, the <u>department</u> juvenile probation officer shall contact the state attorney, who may authorize release.

(d) If the child's final score on the risk assessment instrument indicates that detention is not appropriate authorized, the child may be released by the <u>department</u> juvenile probation officer in accordance with ss. 985.115 and 985.13.

1072 Under no circumstances shall The department, juvenile probation 1073 officer or the state attorney, or <u>a</u> law enforcement officer <u>may</u> 1074 <u>not</u> authorize the detention of any child in a jail or other 1075 facility intended or used for the detention of adults, without 1076 an order of the court.

1077 Section 14. Section 985.255, Florida Statutes, is amended 1078 to read:

985.255 Detention criteria; detention hearing.-

(1) Subject to s. 985.25(1), a child taken into custody and
placed into nonsecure or secure home detention care shall be
given a hearing within 24 hours after being taken into custody.
At the hearing, the court may order continued detention or
detained in secure detention care prior to a detention hearing

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1085 may continue to be detained by the court if: 1086 (a) The child is alleged to be an escapee from a 1087 residential commitment program; or an absconder from a 1088 nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped 1089 1090 while being lawfully transported to or from a residential 1091 commitment program. 1092 (b) The child is wanted in another jurisdiction for an 1093 offense that which, if committed by an adult, would be a felony. 1094 (c) The child is charged with a delinguent act or violation 1095 of law and requests in writing through legal counsel to be 1096 detained for protection from an imminent physical threat to his 1097 or her personal safety. 1098 (d) The child is charged with committing an offense of 1099 domestic violence as defined in s. 741.28 and is detained as 1100 provided in subsection (2). 1101 (e) The child is charged with possession or discharging a 1102 firearm on school property in violation of s. 790.115 or the 1103 illegal possession of a firearm. 1104 (f) The child is charged with a capital felony, a life 1105 felony, a felony of the first degree, a felony of the second 1106 degree which that does not involve a violation of chapter 893, 1107 or a felony of the third degree which that is also a crime of 1108 violence, including any such offense involving the use or 1109 possession of a firearm. 1110 (g) The child is charged with a felony of the any second

1110 (g) The child is charged with <u>a felony of the</u> any second 1111 degree or <u>a felony of the</u> third degree felony involving a 1112 violation of chapter 893 or <u>a felony of the</u> any third degree 1113 <u>which</u> felony that is not also a crime of violence, and the

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1114 child: 1. Has a record of failure to appear at court hearings 1115 after being properly notified in accordance with the Rules of 1116 1117 Juvenile Procedure: 1118 2. Has a record of law violations before prior to court 1119 hearings; 1120 3. Has already been detained or has been released and is 1121 awaiting final disposition of the case; 1122 4. Has a record of violent conduct resulting in physical 1123 injury to others; or 1124 5. Is found to have been in possession of a firearm. 1125 (h) The child is alleged to have violated the conditions of 1126 the child's probation or conditional release supervision. 1127 However, a child detained under this paragraph may be held only 1128 in a consequence unit as provided in s. 985.439. If a 1129 consequence unit is not available, the child shall be placed on 1130 nonsecure home detention with electronic monitoring. 1131 (i) The child is detained on a judicial order for failure 1132 to appear and has previously willfully failed to appear, after 1133 proper notice: τ 1134 1. For an adjudicatory hearing on the same case regardless 1135 of the results of the risk assessment instrument; or 1136 2. At two or more court hearings of any nature on the same 1137 case, regardless of the results of the risk assessment 1138 instrument. 1139 1140 A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this 1141

paragraph. The child's failure to keep the clerk of court and

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COMMITTEE AMENDMENT

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1143 defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court 1144 1145 proceedings does not provide an adequate ground for excusal of 1146 the child's nonappearance at the hearings.

1147 (j) The child is detained on a judicial order for failure 1148 to appear and has previously willfully failed to appear, after 1149 proper notice, at two or more court hearings of any nature on 1150 the same case regardless of the results of the risk assessment 1151 instrument. A child may be held in secure detention for up to 72 1152 hours in advance of the next scheduled court hearing pursuant to 1153 this paragraph. The child's failure to keep the clerk of court 1154 and defense counsel informed of a current and valid mailing 1155 address where the child will receive notice to appear at court 1156 proceedings does not provide an adequate ground for excusal of 1157 the child's nonappearance at the hearings.

(2) A child who is charged with committing an offense classified as of domestic violence as defined in s. 741.28 and whose risk assessment indicates secure detention is not appropriate who does not meet detention criteria may be held in secure detention if the court makes specific written findings that:

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(a) Respite care for the child is not available; or-

1165 (b) It is necessary to place the child in secure detention 1166 in order to protect the victim from injury.

1168 The child may not be held in secure detention under this 1169 subsection for more than 48 hours unless ordered by the court. 1170 After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. 1171

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1172 The child may continue to be held in detention care if the court 1173 makes a specific, written finding that <u>respite care is</u> 1174 <u>unavailable or it detention care</u> is necessary to protect the 1175 victim from injury. However, the child may not be held in 1176 detention care beyond the time limits <u>provided</u> set forth in this 1177 section or s. 985.26.

1178 (3) (a) A child who meets any of the criteria in subsection 1179 (1) and who is ordered to be detained under that subsection 1180 shall be given a hearing within 24 hours after being taken into 1181 custody. The purpose of the detention hearing required under 1182 subsection (1) is to determine the existence of probable cause 1183 that the child has committed the delinquent act or violation of 1184 law that he or she is charged with and the need for continued 1185 detention. Unless a child is detained under paragraph (1)(d) or 1186 paragraph (1)(e), the court shall use the results of the risk 1187 assessment performed by the department juvenile probation 1188 officer and, based on the criteria in subsection (1), shall 1189 determine the need for continued detention. A child placed into 1190 secure, nonsecure, or home detention care may continue to be so 1191 detained by the court.

(b) If the court orders a placement more restrictive than indicated by the results of the risk assessment instrument, the court shall state, in writing, clear and convincing reasons for such placement.

(c) Except as provided in s. 790.22(8) or in s. 985.27, when a child is placed into secure or nonsecure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such

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1201 placement by no later than 5 p.m. on the last day of the 1202 detention period specified in s. 985.26 or s. 985.27, whichever 1203 is applicable, unless the requirements of such applicable 1204 provision have been met or an order of continuance has been 1205 granted under s. 985.26(4). If the court order does not include 1206 a date of release, the release date must be requested of the 1207 court on the same date the youth was placed on detention care. 1208 If a subsequent hearing is needed to provide additional 1209 information to the court for safety planning, the initial order 1210 placing the youth on detention care must reflect the next 1211 detention review hearing, which should be held within 3 calendar 1212 days after the child's initial detention placement.

Section 15. Subsections (1) through (3) of section 985.26, Florida Statutes, are amended to read:

985.26 Length of detention.-

(1) A child may not be placed into or held in secure $\underline{\text{or}_{\tau}}$ nonsecure, or home detention care for <u>more longer</u> than 24 hours unless the court orders such detention care, and the order includes specific instructions that direct the release of the child from such detention care, in accordance with s. 985.255. The order shall be a final order, reviewable by appeal under s. 985.534 and the Florida Rules of Appellate Procedure. Appeals of such orders shall take precedence over other appeals and other pending matters.

(2) A child may not be held in secure <u>or</u>, nonsecure, or
home detention care under a special detention order for more
than 21 days unless an adjudicatory hearing for the case has
been commenced in good faith by the court. However, upon good
cause being shown that the nature of the charge requires

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1230 additional time for the prosecution or defense of the case, the 1231 court may extend the length of detention for an additional 9 1232 days if the child is charged with an offense that would be, if 1233 committed by an adult, a capital felony, a life felony, a felony 1234 of the first degree, or a felony of the second degree involving 1235 violence against any individual.

(3) Except as provided in subsection (2), a child may not be held in secure $\underline{or_{\tau}}$ nonsecure, or home detention care for more than 15 days following the entry of an order of adjudication.

Section 16. Section 985.265, Florida Statutes, is amended to read:

985.265 Detention transfer and release; education; adult jails.-

(1) If a child is detained under this part, the department may transfer the child from nonsecure or home detention care to secure detention care only if significantly changed circumstances warrant such transfer.

(2) If a child is on release status and not detained under this part, the child may be placed into secure <u>or</u>, nonsecure, or home detention care only pursuant to a court hearing in which the original risk assessment instrument <u>and the</u>, rescored based on newly discovered evidence or changed circumstances <u>are</u> <u>introduced into evidence with a rescored risk assessment</u> <u>instrument with the results recommending detention, is</u> <u>introduced into evidence</u>.

(3) (a) <u>If</u> When a juvenile sexual offender is placed in detention, detention staff shall provide appropriate monitoring and supervision to ensure the safety of other children in the facility.

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1259 (b) If When a juvenile charged with murder under s. 782.04, sexual battery under chapter 794, stalking under s. 784.048, or 1260 domestic violence as defined in s. 741.28, or an attempt to 1261 commit any of these offenses sexual offender, under this 1262 1263 subsection, is released from secure detention or transferred to 1264 home detention or nonsecure detention, detention staff shall 1265 immediately notify the appropriate law enforcement agency, and 1266 school personnel, and the victim.

(4) (a) While a child who is currently enrolled in school is in nonsecure or home detention care, the child shall continue to attend school unless otherwise ordered by the court.

(b) While a child is in secure detention care, the child shall receive education commensurate with his or her grade level and educational ability.

(5) The court shall order the delivery of a child to a jail or other facility intended or used for the detention of adults:

(a) If When the child has been transferred or indicted for criminal prosecution as an adult under part $X_{., r}$ except that The court may not order or allow a child alleged to have committed a misdemeanor who is being transferred for criminal prosecution pursuant to either s. 985.556 or s. 985.557 to be detained or held in a jail or other facility intended or used for the detention of adults; however, such child may be held temporarily in a detention facility; or

(b) If When a child taken into custody in this state is wanted by another jurisdiction for prosecution as an adult.

1286 <u>A</u> The child shall be housed separately from adult inmates to 1287 prohibit the a child from having regular contact with

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1288 incarcerated adults, including trustees. As used in this 1289 subsection, the term "regular contact" means sight and sound 1290 contact. Separation of children from adults may not allow shall 1291 permit no more than haphazard or accidental contact. The 1292 receiving jail or other facility shall provide contain a 1293 separate section for children and shall have an adequate staff 1294 adequate to supervise and monitor the child's activities at all 1295 times. Supervision and monitoring of children includes physical 1296 observation and documented checks by jail or receiving facility 1297 supervisory personnel at intervals not to exceed 10 15 minutes. 1298 This subsection does not prohibit placing two or more children 1299 in the same cell. Under no circumstances shall A child may not 1300 be placed in a the same cell with an adult. 1301 Section 17. Section 985.27, Florida Statutes, is amended to 1302 read:

985.27 <u>Postadjudication</u> Postcommitment detention while awaiting commitment placement.-

(1) The court must place all children who are adjudicated and awaiting placement in a commitment program in detention care. Children who are in home detention care or nonsecure detention care may be placed on electronic monitoring.

1309 (a) A child who is awaiting placement in a low-risk 1310 residential program must be removed from detention within 5 1311 days, excluding Saturdays, Sundays, and legal holidays. Any 1312 child held in secure detention during the 5 days must meet 1313 detention admission criteria under this part. A child who is 1314 placed in home detention care, nonsecure detention care, or home nonsecure detention care with electronic monitoring, while 1315 1316 awaiting placement in a minimum-risk or low-risk program, may be

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1317 held in secure detention care for 5 days, if the child violates 1318 the conditions of the home detention care, the nonsecure 1319 detention care, or the electronic monitoring agreement. For any 1320 subsequent violation, the court may impose an additional 5 days 1321 in secure detention care.

1322 (b) A child who is awaiting placement in a nonsecure 1323 moderate-risk residential program must be removed from detention 1324 within 5 days, excluding Saturdays, Sundays, and legal holidays. 1325 A Any child held in secure detention during the 5 days must meet 1326 detention admission criteria under this part. The department may 1327 seek an order from the court authorizing continued detention for 1328 a specific period of time necessary for the appropriate 1329 residential placement of the child. However, such continued 1330 detention in secure detention care may not exceed 15 days after 1331 entry of the commitment order, excluding Saturdays, Sundays, and 1332 legal holidays, and except as otherwise provided in this 1333 section. A child who is placed in home detention care, nonsecure 1334 detention care, or home or nonsecure detention care with 1335 electronic monitoring τ while awaiting placement in a nonsecure 1336 residential moderate-risk program, may be held in secure 1337 detention care for 5 days $_{\tau}$ if the child violates the conditions of the home detention care, the nonsecure detention care, or the 1338 1339 electronic monitoring agreement. For any subsequent violation, 1340 the court may impose an additional 5 days in secure detention 1341 care.

1342 (b) (c) If the child is committed to a high-risk residential 1343 program, the child must be held in <u>secure</u> detention care until 1344 placement or commitment is accomplished.

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(c) (d) If the child is committed to a maximum-risk

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1346 residential program, the child must be held in <u>secure</u> detention 1347 care until placement or commitment is accomplished.

1348 (2) Regardless of detention status, a child being
1349 transported by the department to a residential commitment
1350 facility of the department may be placed in secure detention <u>for</u>
1351 <u>up to 24 hours overnight, not to exceed a 24-hour period,</u> for
1352 the specific purpose of ensuring the safe delivery of the child
1353 to his or her residential commitment program, court,
1354 appointment, transfer, or release.

Section 18. Subsection (1) of section 985.275, Florida Statutes, is amended to read:

985.275 Detention of escapee or absconder on authority of the department.-

1359 (1) If an authorized agent of the department has reasonable 1360 grounds to believe that a any delinquent child committed to the 1361 department has escaped from a residential commitment facility or 1362 in the course of lawful transportation to or from such facility 1363 from being lawfully transported thereto or therefrom, or has 1364 absconded from a nonresidential commitment facility, the agent 1365 shall notify law enforcement and, if the offense qualifies under 1366 chapter 960, notify the victim, and make every reasonable effort 1367 to locate the delinquent child. The child may be returned take 1368 the child into active custody and may deliver the child to the facility or, if it is closer, to a detention center for return 1369 1370 to the facility. However, a child may not be held in detention 1371 more longer than 24 hours, excluding Saturdays, Sundays, and 1372 legal holidays, unless a special order so directing is made by the judge after a detention hearing resulting in a finding that 1373 detention is required based on the criteria in s. 985.255. The 1374

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1375 order must shall state the reasons for such finding. The reasons are shall be reviewable by appeal or in habeas corpus 1376 1377 proceedings in the district court of appeal.

1378 Section 19. Paragraph (b) of subsection (4), paragraph (h) 1379 of subsection (6), and paragraph (a) of subsection (7) of 1380 section 985.433, Florida Statutes, are amended to read:

985.433 Disposition hearings in delinguency cases.-When a child has been found to have committed a delinquent act, the following procedures shall be applicable to the disposition of the case:

(4) Before the court determines and announces the disposition to be imposed, it shall:

(b) Discuss with the child his or her compliance with any predisposition home release plan or other plan imposed since the date of the offense.

(6) The first determination to be made by the court is a 1391 determination of the suitability or nonsuitability for adjudication and commitment of the child to the department. This 1393 determination shall include consideration of the recommendations of the department, which may include a predisposition report. The predisposition report shall include, whether as part of the child's multidisciplinary assessment, classification, and placement process components or separately, evaluation of the following criteria:

1399 (h) The child's educational status, including, but not 1400 limited to, the child's strengths, abilities, and unmet and 1401 special educational needs. The report must shall identify appropriate educational and career vocational goals for the 1402 1403 child. Examples of appropriate goals include:



1404 1. Attainment of a high school diploma or its equivalent. 2. Successful completion of literacy course(s). 1405 1406 3. Successful completion of career and technical 1407 educational vocational course(s). 1408 4. Successful attendance and completion of the child's 1409 current grade, or recovery of credits of classes the child previously failed, if enrolled in school. 1410 1411 5. Enrollment in an apprenticeship or a similar program. 1412 1413 It is the intent of the Legislature that the criteria set forth 1414 in this subsection are general guidelines to be followed at the 1415 discretion of the court and not mandatory requirements of 1416 procedure. It is not the intent of the Legislature to provide 1417 for the appeal of the disposition made under this section. 1418 (7) If the court determines that the child should be 1419 adjudicated as having committed a delinquent act and should be 1420 committed to the department, such determination shall be in 1421 writing or on the record of the hearing. The determination shall 1422 include a specific finding of the reasons for the decision to 1423 adjudicate and to commit the child to the department, including 1424 any determination that the child was a member of a criminal 1425 gang. 1426 (a) The department juvenile probation officer shall 1427 recommend to the court the most appropriate placement and 1428 treatment plan, specifically identifying the restrictiveness level most appropriate for the child if commitment is 1429 1430 recommended. If the court has determined that the child was a member of a criminal gang, that determination shall be given 1431 great weight in identifying the most appropriate restrictiveness 1432

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1433 level for the child. The court shall consider the department's 1434 recommendation in making its commitment decision.

Section 20. Present subsections (4) through (6) of section 985.435, Florida Statutes, are redesignated as subsections (5) through (7), respectively, a new subsection (4) is added to that section, and subsection (3) and present subsection (4) of that section are amended, to read:

985.435 Probation and postcommitment probation; community service.-

1442 (3) A probation program must also include a rehabilitative 1443 program component such as a requirement of participation in 1444 substance abuse treatment or in a school or career and technical 1445 other educational program. The nonconsent of the child to 1446 treatment in a substance abuse treatment program does not 1447 preclude in no way precludes the court from ordering such 1448 treatment. Upon the recommendation of the department at the time 1449 of disposition, or subsequent to disposition pursuant to the 1450 filing of a petition alleging a violation of the child's 1451 conditions of postcommitment probation, the court may order the 1452 child to submit to random testing for the purpose of detecting 1453 and monitoring the use of alcohol or controlled substances.

(4) A probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation, but has not committed any new violations of law. The alternative consequence component shall be designed to provide swift and appropriate consequences to any noncompliance with technical conditions of probation. If the probation program includes this component, specific consequences that apply to noncompliance

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1462 with specific technical conditions of probation must be detailed 1463 in the disposition order.

(5) (4) An evaluation of the youth's risk to reoffend A 1464 1465 classification scale for levels of supervision shall be provided 1466 by the department, taking into account the child's needs and 1467 risks relative to probation supervision requirements to 1468 reasonably ensure the public safety. Probation programs for 1469 children shall be supervised by the department or by any other 1470 person or agency specifically authorized by the court. These 1471 programs must include, but are not limited to, structured or 1472 restricted activities as described in this section and s. 1473 985.439, and shall be designed to encourage the child toward 1474 acceptable and functional social behavior.

Section 21. Paragraph (a) of subsection (1) and subsection (4) of section 985.439, Florida Statutes, are amended to read:

985.439 Violation of probation or postcommitment probation.-

(1) (a) This section is applicable when the court has jurisdiction over <u>a child on probation or postcommitment</u> <u>probation, regardless of adjudication</u> an adjudicated delinquent child.

(4) Upon the child's admission, or if the court finds after 1483 1484 a hearing that the child has violated the conditions of probation or postcommitment probation, the court shall enter an 1485 1486 order revoking, modifying, or continuing probation or 1487 postcommitment probation. In each such case, the court shall 1488 enter a new disposition order and, in addition to the sanctions 1489 set forth in this section, may impose any sanction the court could have imposed at the original disposition hearing. If the 1490

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1491 child is found to have violated the conditions of probation or 1492 postcommitment probation, the court may:

(a) Place the child in a consequence unit in that judicial circuit, if available, for up to 5 days for a first violation and up to 15 days for a second or subsequent violation.

(b) Place the child on nonsecure home detention with electronic monitoring. However, this sanction may be used only if a residential consequence unit is not available.

(c) Modify or continue the child's probation program or postcommitment probation program.

(d) Revoke probation or postcommitment probation and commit the child to the department.

(e) If the violation of probation is technical in nature and not a new violation of law, place the child in an alternative consequence program designed to provide swift and appropriate consequences for any further violations of probation.

1. Alternative consequence programs shall be established at the local level in coordination with law enforcement agencies, the chief judge of the circuit, the state attorney, and the public defender.

2. Alternative consequence programs may be operated by an entity such as a law enforcement agency, the department, a juvenile assessment center, a county or municipality, or another entity selected by the department.

3. Upon placing a child in an alternative consequence 1517 program, the court must approve specific consequences for 1518 specific violations of the conditions of probation. Section 22. Subsection (2) of section 985.441, Florida 1519



1520	Statutes, is amended to read:
1521	985.441 Commitment
1522	(2) Notwithstanding subsection (1), the court having
1523	jurisdiction over an adjudicated delinquent child whose
1524	underlying offense <u>is</u> was a misdemeanor, or a child who is
1525	currently on probation for a misdemeanor, may not commit the
1526	child for any misdemeanor offense or any probation violation
1527	that is technical in nature and not a new violation of law at a
1528	restrictiveness level other than minimum-risk nonresidential
1529	unless the probation violation is a new violation of law
1530	constituting a felony. However, the court may commit such child
1531	to a <u>nonsecure</u> low-risk or moderate-risk residential placement
1532	if:
1533	(a) The child has previously been adjudicated <u>or had</u>
1534	adjudication withheld for a felony offense;
1535	(b) The child has previously been adjudicated or had
1536	adjudication withheld for three or more misdemeanor offenses
1537	within the preceding 18 months;
1538	(c) The child is before the court for disposition for a
1539	violation of s. 800.03, s. 806.031, or s. 828.12; or
1540	(d) The court finds by a preponderance of the evidence that
1541	the protection of the public requires such placement or that the
1542	particular needs of the child would be best served by such
1543	placement. Such finding must be in writing.
1544	Section 23. Paragraph (a) of subsection (1) and subsection
1545	(5) of section 985.46, Florida Statutes, are amended to read:
1546	985.46 Conditional release
1547	(1) The Legislature finds that:
1548	(a) Conditional release is the care, treatment, help,

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1549 provision of transition-to-adulthood services, and supervision 1550 provided to juveniles released from residential commitment 1551 programs to promote rehabilitation and prevent recidivism.

(5) Participation in the educational program by students of compulsory school attendance age pursuant to s. 1003.21(1) and (2)(a) is mandatory for juvenile justice youth on conditional release or postcommitment probation status. A student of noncompulsory school-attendance age who has not received a high school diploma or its equivalent must participate in <u>an the</u> educational <u>or career and technical educational</u> program. A youth who has received a high school diploma or its equivalent and is not employed must participate in workforce development or other career or technical education or attend a community college or a university while in the program, subject to available funding.

Section 24. Subsections (1) through (5) of section 985.461, Florida Statutes, are amended to read:

985.461 Transition to adulthood.-

1566 (1) The Legislature finds that older youth are faced with 1567 the need to learn how to support themselves within legal means 1568 and overcome the stigma of being delinquent. In most cases, 1569 parents expedite this transition. It is the intent of the 1570 Legislature that the department provide older youth in its 1571 custody or under its supervision with opportunities for 1572participating in transition-to-adulthood services while in the 1573 department's commitment programs or in probation or conditional release programs in the community. These services should be 1574 1575 reasonable and appropriate for the youths' respective ages or 1576 special needs and provide activities that build life skills and 1577 increase the ability to live independently and become self-

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1579 (2) Youth served by the department who are in the custody of the Department of Children and Families Family Services and who entered juvenile justice placement from a foster care placement, if otherwise eligible, may receive independent living transition services pursuant to s. 409.1451. Court-ordered commitment or probation with the department is not a barrier to eligibility for the array of services available to a youth who is in the dependency foster care system only.

(3) For a dependent child in the foster care system, adjudication for delinquency does not, by itself, disqualify such child for eligibility in the Department of Children and Families' Family Services' independent living program.

(4) As part of the child's treatment plan, the department may provide transition-to-adulthood services to children released from residential commitment. To support participation in transition-to-adulthood services and subject to appropriation, the department may:

(a) Assess the child's skills and abilities to live independently and become self-sufficient. The specific services to be provided shall be determined using an assessment of his or her readiness for adult life.

(b) Use community reentry teams to assist in the development of Develop a list of age-appropriate activities and 1602 responsibilities to be incorporated in the child's written case plan for any youth 17 years of age or older who is under the custody or supervision of the department. Community reentry teams may include representation from school districts, law enforcement, workforce development services, community-based

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1607 <u>service providers, and the youth's family.</u> Activities may 1608 include, but are not limited to, life skills training, including 1609 training to develop banking and budgeting skills, interviewing 1610 and career planning skills, parenting skills, personal health 1611 management, and time management or organizational skills; 1612 educational support; employment training; and counseling.

(c) Provide information related to social security insurance benefits and public assistance.

(d) Request parental or guardian permission for the youth to participate in transition-to-adulthood services. Upon such consent, age-appropriate activities shall be incorporated into the youth's written case plan. This plan may include specific goals and objectives and shall be reviewed and updated at least quarterly. If the parent or guardian is cooperative, the plan may not interfere with the parent's or guardian's rights to nurture and train his or her child in ways that are otherwise in compliance with the law and court order.

(e) Contract for transition-to-adulthood services that include residential services and assistance and allow the child to live independently of the daily care and supervision of an adult in a setting that is not licensed under s. 409.175. A child under the care or supervision of the department who has reached 17 years of age but is not yet 19 years of age is eligible for such services if he or she does not pose a danger to the public and is able to demonstrate minimally sufficient skills and aptitude for living under decreased adult supervision, as determined by the department, using established procedures and assessments.

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(f) Assist the youth in building a portfolio of educational

1636	and vocational accomplishments, necessary identification,
1637	resumes, and cover letters in an effort to enhance the youth's
1638	employability.
1639	(g) Collaborate with school district contacts to facilitate
1640	appropriate educational services based on the youth's identified
1641	needs.
1642	(5) For a child who is 17 years of age or older, under the
1643	department's care or supervision, and without benefit of parents
1644	or legal guardians capable of assisting the child in the
1645	transition to adult life, the department may provide an
1646	assessment to determine the child's skills and abilities to live
1647	independently and become self-sufficient. Based on the
1648	assessment and within existing resources, services and training
1649	may be provided in order to develop the necessary skills and
1650	abilities before the child's 18th birthday.
1651	Section 25. Paragraph (b) of subsection (3) of section
1652	985.481, Florida Statutes, is amended to read:
1653	985.481 Sexual offenders adjudicated delinquent;
1654	notification upon release
1655	(3)
1656	(b) No later than November 1, 2007, The department <u>shall</u>
1657	must make the information described in subparagraph (a)1.
1658	available electronically to the Department of Law Enforcement in
1659	its database and in a format that is compatible with the
1660	requirements of the Florida Crime Information Center.
1661	Section 26. Subsection (5) of section 985.4815, Florida
1662	Statutes, is amended to read:
1663	985.4815 Notification to Department of Law Enforcement of
1664	information on juvenile sexual offenders

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(5) In addition to notification and transmittal requirements imposed by any other provision of law, the department shall compile information on any sexual offender and provide the information to the Department of Law Enforcement. No later than November 1, 2007, The department <u>shall</u> must make the information available electronically to the Department of Law Enforcement in its database in a format that is compatible with the requirements of the Florida Crime Information Center.

Section 27. Subsection (2), paragraph (a) of subsection (3), and paragraph (a) of subsection (9) of section 985.601, Florida Statutes, are amended to read:

985.601 Administering the juvenile justice continuum.-

(2) The department shall develop and implement an appropriate continuum of care that provides individualized, multidisciplinary assessments, objective evaluations of relative risks, and the matching of needs with placements for all children under its care, and that uses a system of case management to facilitate each child being appropriately assessed, provided with services, and placed in a program that meets the child's needs. <u>The Legislature recognizes that the</u> <u>purpose of the juvenile justice system is to increase public</u> <u>safety by reducing juvenile delinquency and recognizes the</u> <u>importance of ensuring that children who are assessed as low and</u> <u>moderate risk to reoffend are considered for placement in a</u> <u>nonresidential program.</u>

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1694	and insert:
1695	s. 985.601, F.S.; providing legislative intent;
1696	requiring the department to contract

By Senator Bradley

	7-00541D-14 2014700
1	A bill to be entitled
2	An act relating to the Department of Juvenile Justice;
3	amending s. 985.01, F.S.; revising the purposes of ch.
4	985, F.S., relating to juvenile justice; amending s.
5	985.02, F.S.; revising the legislative intent and
6	findings relating to the juvenile justice system;
7	amending s. 985.03, F.S.; defining and redefining
8	terms; amending s. 985.0301, F.S.; allowing a child
9	who has been detained to be transferred to the
10	detention center or facility in the circuit in which
11	the child resides or will reside at the time of
12	detention; deleting provisions relating to the
13	retention of jurisdiction by the court of a child
14	under certain circumstances; conforming provisions to
15	changes made by the act; amending s. 985.037, F.S.;
16	requiring the court to hold a hearing if a child is
17	charged with direct contempt of court and to afford
18	the child due process at such hearing; requiring the
19	court to review the placement of a child in a secure
20	detention facility upon motion by the defense or state
21	attorney; conforming provisions to changes made by the
22	act; repealing s. 985.105, F.S., relating to youth
23	custody officers; amending s. 985.11, F.S.; providing
24	that a child's fingerprints do not need to be
25	submitted to the Department of Law Enforcement under
26	certain circumstances; amending s. 985.14, F.S.;
27	authorizing juvenile assessment center personnel to
28	perform the intake process for children in custody of
29	the Department of Juvenile Justice; providing

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	7-00541D-14 2014700_
30	requirements for the intake process; amending s.
31	985.145, F.S.; transferring responsibilities relating
32	to the intake process from the juvenile probation
33	officer to the department; creating s. 985.17, F.S.;
34	providing goals for the department's prevention
35	services; requiring the department to engage with
36	certain faith-based and community-based organizations;
37	requiring the department to establish volunteer
38	coordinators; requiring the department to promote a
39	specified license plate; providing for the use of
40	funds related to prevention services; amending s.
41	985.24, F.S.; requiring that a determination or court
42	order regarding the use of detention care include any
43	findings that the child illegally possessed a firearm;
44	authorizing the department to develop evening-
45	reporting centers; providing requirements for such
46	centers; conforming provisions to changes made by the
47	act; amending s. 985.245, F.S.; conforming provisions
48	to changes made by the act; amending s. 985.25, F.S.;
49	transferring the responsibility for detention intake
50	from the juvenile probation officer to the department;
51	requiring that a child be placed in secure detention
52	care until the child's detention hearing under certain
53	circumstances; conforming provisions to changes made
54	by the act; amending s. 985.255, F.S.; requiring that
55	a child taken into custody and placed into secure or
56	nonsecure detention care be given a hearing within a
57	certain timeframe; authorizing the court to order
58	continued detention under certain circumstances;

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7-00541D-14 2014700 59 requiring that, if the initial order placing the youth 60 on detention care does not include a release date, a release date be requested of the court on the same 61 62 date the youth is placed on detention care; requiring 63 that, if a subsequent hearing is needed to provide additional information to the court for safety 64 65 planning, the initial order reflect the date of the next detention review hearing, which must be within 3 66 calendar days after the child's initial detention 67 68 placement; conforming provisions to changes made by 69 the act; amending s. 985.26, F.S.; conforming 70 provisions to changes made by the act; amending s. 71 985.265, F.S.; requiring that detention staff 72 immediately notify law enforcement, school personnel, 73 and the victim, when a juvenile charged with a 74 specified crime is released from secure detention or 75 transferred to nonsecure detention; conforming 76 provisions to changes made by the act; amending s. 77 985.27, F.S.; conforming provisions to changes made by 78 the act; amending s. 985.275, F.S.; requiring an 79 authorized agent of the department to notify law 80 enforcement and attempt to locate a child who has 81 escaped from a residential commitment facility; 82 requiring that the victim be notified under certain 83 circumstances; amending s. 985.433, F.S.; revising provisions relating to educational goals of a child in 84 85 a predisposition report; requiring the department, 86 rather than the juvenile probation officer, to 87 recommend to the court the most appropriate treatment

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88	and placement plan; amending s. 985.435, F.S.;
89	authorizing a probation program to include an
90	alternative consequence component; providing
91	requirements for such component; requiring that the
92	department provide an evaluation of the youth's risk
93	to reoffend; conforming provisions to changes made by
94	the act; amending s. 985.439, F.S.; providing that the
95	section applies to children on probation or
96	postcommitment probation, regardless of adjudication;
97	authorizing the department to establish programs to
98	provide alternative consequences for certain probation
99	violations; providing requirements for such programs;
100	conforming provisions to changes made by the act;
101	amending s. 985.441, F.S.; providing that the court
102	may commit a child who is on probation for a
103	misdemeanor or a certain probation violation only at a
104	specified restrictiveness level; authorizing the court
105	to commit such child to a nonsecure residential
106	placement in certain circumstances; conforming
107	provisions to changes made by the act; amending s.
108	985.46, F.S.; providing that conditional release
109	includes transition-to-adulthood services; requiring
110	certain students to participate in an educational or
111	career education program; amending s. 985.461, F.S.;
112	authorizing the department to provide transition-to-
113	adulthood services under certain circumstances;
114	authorizing the department to use community reentry
115	teams composed of certain individuals and entities for
116	certain purposes; removing age restrictions for youth

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	7-00541D-14 2014700
117	who receive transition-to-adulthood services;
118	requiring the department to assist youth in developing
119	a portfolio of certain accomplishments and to
120	collaborate with school districts to facilitate
121	certain educational services; amending ss. 985.481 and
122	985.4815, F.S.; deleting obsolete provisions; amending
123	s. 985.601, F.S.; requiring the department to contract
124	for programs to provide trauma-informed care, family
125	engagement resources, and gender-specific programming;
126	authorizing the department to pay expenses in support
127	of certain programs; repealing s. 985.605, F.S.,
128	relating to prevention service programs, monitoring,
129	and uniform performance measures; repealing s.
130	985.606, F.S., relating to prevention services
131	providers, performance data collection, and reporting;
132	repealing s. 985.61, F.S., relating to early
133	delinquency intervention programs; amending s.
134	985.632, F.S.; revising legislative intent to include
135	that the department establish a performance
136	accountability system for certain providers that
137	contract with the department; providing requirements
138	for such contracts; requiring that the department's
139	Bureau of Research and Planning submit a report to the
140	Legislature; providing requirements for the report;
141	defining terms; requiring that the department develop,
142	in consultation with specified entities, a standard
143	methodology for measuring, evaluating, and reporting;
144	providing requirements for the methodology; deleting
145	reporting requirements related to cost data; revising

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146	the requirements of the department's cost-
147	effectiveness model; requiring the department to
148	establish a quality improvement system rather than a
149	quality assurance system; conforming provisions to
150	changes made by the act; amending s. 985.644, F.S.;
151	providing that specified individuals are not required
152	to submit to certain screenings under certain
153	circumstances; creating s. 985.6441, F.S.; defining
154	the terms "hospital" and "health care provider";
155	limiting the department's compensation of health care
156	providers; amending s. 985.66, F.S.; revising the
157	purpose of juvenile justice programs and courses;
158	revising the duties of the department for staff
159	development and training; providing that employees of
160	certain contract providers may participate in the
161	training program; amending s. 985.664, F.S.; requiring
162	the juvenile justice circuit advisory board, rather
163	than the secretary of the department, to appoint a new
164	chair to that board; providing that the chair serves
165	at the pleasure of the secretary; amending s. 985.672,
166	F.S.; redefining the term "direct-support
167	organization"; authorizing the department to allow the
168	use of personnel services of the juvenile justice
169	system by a direct-support organization; amending s.
170	985.682, F.S.; deleting provisions relating to a
171	statewide study; conforming provisions to changes made
172	by the act; amending s. 985.69, F.S.; providing for
173	repair and maintenance funding for juvenile justice
174	purposes; repealing s. 985.694, F.S., relating to the

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175	 Juvenile Care and Maintenance Trust Fund; amending s.
176	985.701, F.S.; defining the term "juvenile offender";
177	removing the requirement that the juvenile be detained
178	by, supervised by, or committed to the custody of the
179	department for the purposes of charging sexual
180	misconduct by an employee of the department; creating
181	s. 985.702, F.S.; defining terms; prohibiting an
182	employee from willfully and maliciously neglecting a
183	juvenile offender; providing criminal penalties;
184	providing for dismissal from employment with the
185	department; requiring an employee to report certain
186	information; requiring the department's inspector
187	general to conduct an appropriate administrative
188	investigation; requiring that the inspector general
189	notify the state attorney under certain circumstances;
190	amending s. 943.0582, F.S.; requiring that the
191	department expunge the nonjudicial arrest record of
192	certain minors under certain circumstances; repealing
193	s. 945.75, F.S., relating to tours of state
194	correctional facilities for juveniles; amending s.
195	121.0515, F.S.; conforming provisions to changes made
196	by the act; amending ss. 985.045 and 985.721, F.S.;
197	conforming cross-references; providing an effective
198	date.
199	
200	Be It Enacted by the Legislature of the State of Florida:
201	
202	Section 1. Section 985.01, Florida Statutes, is amended to
203	read:
I.	

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204	985.01 Purposes and intent
205	(1) The purposes of this chapter are:
206	(a) To increase public safety by reducing juvenile
207	delinquency through effective prevention, intervention, and
208	treatment services that strengthen and reform the lives of
209	children.
210	<u>(b)</u> To provide judicial and other procedures to assure
211	due process through which children, victims, and other
212	interested parties are assured fair hearings by a respectful and
213	respected court or other tribunal and the recognition,
214	protection, and enforcement of their constitutional and other
215	legal rights, while ensuring that public safety interests and
216	the authority and dignity of the courts are adequately
217	protected.
218	<u>(c)</u> (b) To provide for the care, safety, and protection of
219	children in an environment that fosters healthy social,
220	emotional, intellectual, educational, and physical development;
221	to ensure secure and safe custody; and to promote the health and
222	well-being of all children under the state's care.
223	<u>(d)</u> To ensure the protection of society, by providing
224	for a comprehensive standardized assessment of the child's needs
225	so that the most appropriate control, discipline, punishment,
226	and treatment can be administered consistent with the
227	seriousness of the act committed, the community's long-term need
228	for public safety, the prior record of the child, and the
229	specific rehabilitation needs of the child, while also
230	providing, whenever possible, restitution to the victim of the
231	offense.
232	<u>(e)</u> To preserve and strengthen the child's family ties <u>,</u>

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7-00541D-14 2014700 233 whenever possible, by providing for removal of the child from the physical custody of a parent parental custody only when his 234 235 or her welfare or the safety and protection of the public cannot 236 be adequately safeguarded without such removal; and, when the 237 child is removed from his or her own family, to secure custody, 238 care, and discipline for the child as nearly as possible 239 equivalent to that which should have been given by the parents; 240 and to assure, in all cases in which a child must be permanently removed from parental custody, that the child be placed in an 241 242 approved family home, adoptive home, independent living program, 243 or other placement that provides the most stable and permanent 244 living arrangement for the child, as determined by the court. 245

(f) (e) 1. To assure that the adjudication and disposition of a child alleged or found to have committed a violation of Florida law be exercised with appropriate discretion and in keeping with the seriousness of the offense and the need for treatment services, and that all findings made under this chapter be based upon facts presented at a hearing that meets the constitutional standards of fundamental fairness and due process.

253 2. To assure that the sentencing and placement of a child 254 tried as an adult be appropriate and in keeping with the 255 seriousness of the offense and the child's need for 256 rehabilitative services, and that the proceedings and procedures 257 applicable to such sentencing and placement be applied within 258 the full framework of constitutional standards of fundamental 259 fairness and due process.

260 (g) (f) To provide children committed to the department with 261 training in life skills, including career <u>and technical</u>

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262	education, if appropriate.
263	(h) To care for children in the least restrictive and most
264	appropriate service environments.
265	(i) To allocate resources for the most effective programs,
266	services, and treatments to ensure that children, their
267	families, and their community support systems are connected with
268	these programs, services, and treatments at the most impactful
269	points along the juvenile justice continuum.
270	(2) It is the intent of the Legislature that this chapter
271	be liberally interpreted and construed in conformity with its
272	declared purposes.
273	Section 2. Section 985.02, Florida Statutes, is amended to
274	read:
275	985.02 Legislative intent for the juvenile justice system
276	(1) GENERAL PROTECTIONS FOR CHILDRENIt is a purpose of
277	the Legislature that the children of this state be provided with
278	the following protections:
279	(a) Protection from abuse, neglect, and exploitation.
280	(b) A permanent and stable home.
281	(c) A safe and nurturing environment that which will
282	preserve a sense of personal dignity and integrity.
283	(d) Adequate nutrition, shelter, and clothing.
284	(e) Effective treatment to address physical, social, and
285	emotional needs, regardless of geographical location.
286	(f) Equal opportunity and access to quality and effective
287	education, which will meet the individual needs of each child,
288	and to recreation and other community resources to develop
289	individual abilities.
290	(g) Access to preventive services.
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291
          (h) An independent, trained advocate when intervention is
292
     necessary, and a skilled guardian or caretaker in a safe
293
     environment when alternative placement is necessary.
294
          (h) (i) Gender-specific programming and gender-specific
295
     program models and services that comprehensively address the
296
     needs of a targeted gender group.
297
           (2) SUBSTANCE ABUSE SERVICES.-The Legislature finds that
298
     children in the care of the state's dependency and delinquency
299
     system systems need appropriate health care services, that the
300
     impact of substance abuse on health indicates the need for
301
     health care services to include substance abuse services where
302
     appropriate, and that it is in the state's best interest that
303
     such children be provided the services they need to enable them
304
     to become and remain independent of state care. In order to
305
     provide these services, the state's dependency and delinquency
306
     system systems must have the ability to identify and provide
307
     appropriate intervention and treatment for children with
308
     personal or family-related substance abuse problems. It is
309
     therefore the purpose of the Legislature to provide authority
310
     for the state to contract with community substance abuse
311
     treatment providers for the development and operation of
312
     specialized support and overlay services for the dependency and
313
     delinquency system systems, which will be fully implemented and
314
     used utilized as resources permit.
315
           (3) JUVENILE JUSTICE AND DELINQUENCY PREVENTION.-It is the
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316 policy of the state with respect to juvenile justice and 317 delinquency prevention to first protect the public from acts of 318 delinquency. In addition, it is the policy of the state to: 319 (a) Develop and implement effective methods of preventing

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320	and reducing acts of delinquency, with a focus on maintaining
321	and strengthening the family as a whole so that children may
322	remain in their homes or communities.
323	(b) Develop and implement effective programs to prevent
324	delinquency, to divert children from the traditional juvenile
325	justice system, to intervene at an early stage of delinquency,
326	and to provide critically needed alternatives to
327	institutionalization and deep-end commitment.
328	(c) Provide well-trained personnel, high-quality services,
329	and cost-effective programs within the juvenile justice system.
330	(d) Increase the capacity of local governments and public
331	and private agencies to conduct rehabilitative treatment
332	programs and to provide research, evaluation, and training
333	services in the field of juvenile delinquency prevention.
334	
335	The Legislature intends that detention care, in addition to
336	providing secure and safe custody, will promote the health and
337	well-being of the children committed thereto and provide an
338	environment that fosters their social, emotional, intellectual,
339	and physical development.
340	(4) DETENTION
341	(a) The Legislature finds that there is a need for a secure
342	placement for certain children alleged to have committed a
343	delinquent act. The Legislature finds that detention should be
344	used only when less restrictive interim placement alternatives
345	before prior to adjudication and disposition are not
346	appropriate. The Legislature further finds that decisions to
347	detain should be based in part on a prudent assessment of risk
348	and be limited to situations where there is clear and convincing

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349	evidence that a child presents a risk of failing to appear or
350	presents a substantial risk of inflicting bodily harm on others
351	as evidenced by recent behavior; presents a history of
352	committing a serious property offense prior to adjudication,
353	disposition, or placement; has acted in direct or indirect
354	contempt of court; or requests protection from imminent bodily
355	harm.
356	(b) The Legislature intends that a juvenile found to have
357	committed a delinquent act understands the consequences and the
358	serious nature of such behavior. Therefore, the Legislature
359	finds that secure detention is appropriate to provide punishment
360	for juveniles who pose a threat to public safety that
361	discourages further delinquent behavior. The Legislature also
362	finds that certain juveniles have committed a sufficient number
363	of criminal acts, including acts involving violence to persons,
364	to represent sufficient danger to the community to warrant
365	sentencing and placement within the adult system. It is the
366	intent of the Legislature to establish clear criteria in order
367	to identify these juveniles and remove them from the juvenile
368	justice system.
369	(5) SITING OF FACILITIES.—
370	(a) The Legislature finds that timely siting and
371	development of needed residential facilities for juvenile

371 development of needed residential facilities for juvenile 372 offenders is critical to the public safety of the citizens of 373 this state and to the effective rehabilitation of juvenile 374 offenders.

(b) It is the purpose of the Legislature to guarantee that such facilities are sited and developed within reasonable timeframes after they are legislatively authorized and

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2014700 7-00541D-14 378 appropriated. 379 (c) The Legislature further finds that such facilities must be located in areas of the state close to the home communities 380 381 of the children they house in order to ensure the most effective 382 rehabilitation efforts, and the most intensive postrelease 383 supervision, and case management. The placement of facilities 384 close to the home communities of the children they house is also 385 intended to facilitate family involvement in the treatment 386 process. Residential facilities may not shall have no more than 387 90 165 beds each, including campus-style programs, unless those 388 campus-style programs include more than one level of 389 restrictiveness, provide multilevel education and treatment 390 program programs using different treatment protocols $_{\mathcal{T}}$ and have 391 facilities that coexist separately in distinct locations on the 392 same property.

(d) It is the intent of the Legislature that all other departments and agencies of the state shall cooperate fully with the Department of Juvenile Justice to accomplish the siting of facilities for juvenile offenders.

398 The supervision, counseling, <u>and</u> rehabilitative treatment, and 399 punitive efforts of the juvenile justice system should avoid the 400 inappropriate use of correctional programs and large 401 institutions. The Legislature finds that detention services 402 should exceed the primary goal of providing safe and secure 403 custody pending adjudication and disposition.

404 (6) PARENTAL, CUSTODIAL, AND GUARDIAN RESPONSIBILITIES.405 Parents, custodians, and guardians are deemed by the state to be
406 responsible for providing their children with sufficient

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7-00541D-14 2014700 407 support, quidance, and supervision to deter their participation 408 in delinquent acts. The state further recognizes that the 409 ability of parents, custodians, and guardians to fulfill those 410 responsibilities can be greatly impaired by economic, social, 411 behavioral, emotional, and related problems. It is therefore the 412 policy of the Legislature that it is the state's responsibility 413 to ensure that factors impeding the ability of caretakers to 414 fulfill their responsibilities are identified through the delinquency intake process and that appropriate recommendations 415 416 to address those problems are considered in any judicial or 417 nonjudicial proceeding. Nonetheless, as it is also the intent of 418 the Legislature to preserve and strengthen the child's family 419 ties, it is the policy of the Legislature that the emotional, 420 legal, and financial responsibilities of the caretaker with 421 regard to the care, custody, and support of the child continue 422 while the child is in the physical or legal custody of the 423 department. 424 (7) GENDER-SPECIFIC PROGRAMMING.-

425 (a) The Legislature finds that the prevention, treatment, 426 and rehabilitation needs of children youth served by the 427 juvenile justice system are gender specific gender-specific.

428 (b) Gender-specific programming refers to unique program 429 models and services that comprehensively address the needs of a 430 targeted gender group. Gender-specific services require the 431 adherence to the principle of equity to ensure that the 432 different interests of young women and men are recognized and 433 varying needs are met, with equality as the desired outcome. 434 Gender-specific programming focuses on the differences between young females' and young males' roles and responsibilities, 435

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436	positions in society, access to and use of resources, and social
437	codes governing behavior. Gender-specific programs increase the
438	effectiveness of programs by making interventions more
439	appropriate to the specific needs of young women and men and
440	ensuring that these programs do not unknowingly create,
441	maintain, or reinforce gender roles or relations that may be
442	damaging.
443	(8) TRAUMA-INFORMED CARE The Legislature finds that the
444	department should use trauma-informed care as an approach to
445	treating children with histories of trauma. Trauma-informed care
446	assists service providers in recognizing the symptoms of trauma
447	and acknowledges the role trauma has played in the child's life.
448	Services for children should be based on an understanding of the
449	vulnerabilities and triggers of trauma survivors which
450	traditional service delivery approaches may exacerbate so that
451	these services and programs can be more supportive and avoid re-
452	traumatization. The department should use trauma-specific
453	interventions that are designed to address the consequences of
454	trauma in the child and to facilitate healing.
455	(9) FAMILY AND COMMUNITY ENGAGEMENTThe Legislature finds
456	that families and community support systems are critical to the
457	success of children and to ensure that they are nondelinquent.
458	Therefore, if appropriate, children who can be held accountable
459	safely through serving and treating them in their homes and
460	communities should be diverted from more restrictive placements
461	within the juvenile justice system. The Legislature also finds
462	that there should be an emphasis on strengthening the family and
463	immersing them in their community support system. The department
464	should develop customized plans that acknowledge the importance
I	

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465	of family and community support systems. The customized plans
466	should recognize a child's individual needs, capitalize on his
467	or her strengths, reduce risk to the child, and prepare the
468	child for a successful transition to, and unification with, his
469	or her family and community support system. The child's family
470	shall be included in the department's process of assessing the
471	needs, services and treatment, and community connections of the
472	children who are involved with the juvenile justice system or in
473	danger of becoming so involved.
474	Section 3. Section 985.03, Florida Statutes, is reordered
475	and amended to read:
476	985.03 Definitions.—As used in this chapter, the term:
477	(1) "Abscond" means to hide, conceal, or absent oneself
478	from the jurisdiction of the court or supervision of the
479	department to avoid prosecution or supervision.
480	(2) (1) "Addictions receiving facility" means a substance
481	abuse service provider as defined in chapter 397.
482	(3)(2) "Adjudicatory hearing" means a hearing for the court
483	to determine whether or not the facts support the allegations
484	stated in the petition, as is provided for under s. 985.35 in
485	delinquency cases.
486	(4) "Adult" means any natural person other than a child.
487	(5)(4) "Arbitration" means a process whereby a neutral
488	third person or panel, called an arbitrator or an arbitration
489	panel, considers the facts and arguments presented by the
490	parties and renders a decision, which may be binding or
491	nonbinding.
492	<u>(6)</u> "Authorized agent" or "designee" of the department
493	means a person or agency assigned or designated by the
I	

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494	department or the Department of Children and Family Services, as
495	$rac{\mathrm{appropriate}_{r}}{}$ to perform duties or exercise powers under this
496	chapter. The term and includes contract providers and their
497	employees for purposes of providing services to and managing
498	cases of children in need of services and families in need of
499	services.
500	<u>(7)</u> "Child <u>,</u> " or "juvenile <u>,</u> " or "youth" means any
501	unmarried person <u>younger than</u> under the age of 18 <u>years of age</u>
502	who has not been emancipated by order of the court and who has
503	been found or alleged to be dependent, in need of services, or
504	from a family in need of services; or any married or unmarried
505	person who is <u>alleged to have committed</u> charged with a violation
506	of law occurring <u>before</u> prior to the time that person <u>reaches</u>
507	reached the age of 18 years <u>of age</u> .
508	(8) (7) "Child in need of services" has the same meaning as
509	provided in s. 984.03 means a child for whom there is no pending
510	investigation into an allegation or suspicion of abuse, neglect,
511	or abandonment; no pending referral alleging the child is
512	delinquent; or no current supervision by the department or the
513	Department of Children and Family Services for an adjudication
514	of dependency or delinquency. The child must also, under this
515	chapter, be found by the court:
516	(a) To have persistently run away from the child's parents
517	or legal custodians despite reasonable efforts of the child, the
518	parents or legal custodians, and appropriate agencies to remedy
519	the conditions contributing to the behavior. Reasonable efforts
520	shall include voluntary participation by the child's parents or
521	legal custodians and the child in family mediation, services,
522	and treatment offered by the department or the Department of

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523	Children and Family Services;
524	(b) To be habitually truant from school, while subject to
525	compulsory school attendance, despite reasonable efforts to
526	remedy the situation under ss. 1003.26 and 1003.27 and through
527	voluntary participation by the child's parents or legal
528	custodians and by the child in family mediation, services, and
529	treatment offered by the Department of Juvenile Justice or the
530	Department of Children and Family Services; or
531	(c) To have persistently disobeyed the reasonable and

532 lawful demands of the child's parents or legal custodians, and 533 to be beyond their control despite efforts by the child's 534 parents or legal custodians and appropriate agencies to remedy 535 the conditions contributing to the behavior. Reasonable efforts 536 may include such things as good faith participation in family or 537 individual counseling.

538 (9) (8) "Child who has been found to have committed a delinquent act" means a child who, under this chapter, is found 539 by a court to have committed a violation of law or to be in 540 541 direct or indirect contempt of court. The term, except that this definition does not include a child who commits an act 542 543 constituting contempt of court arising out of a dependency 544 proceeding or a proceeding concerning a child or family in need 545 of services.

546 (9) "Child support" means a court-ordered obligation, 547 enforced under chapter 61 and ss. 409.2551-409.2597, for 548 monetary support for the care, maintenance, training, and 549 education of a child.

550 (10) "Circuit" means any of the 20 judicial circuits as set 551 forth in s. 26.021.

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7-00541D-14 2014700 552 (11) "Comprehensive assessment" or "assessment" means the 553 gathering of information for the evaluation of a juvenile 554 offender's or a child's physical, psychological, educational, 555 career and technical educational vocational, and social 556 condition and family environment as they relate to the child's 557 need for rehabilitative and treatment services, including 558 substance abuse treatment services, mental health services, 559 developmental services, literacy services, medical services, 560 family services, and other specialized services, as appropriate. 561 (12) "Conditional release" means the care, treatment, help, 562 transition-to-adulthood services, and supervision provided to a 563 juvenile released from a residential commitment program which is 564 intended to promote rehabilitation and prevent recidivism. The 565 purpose of conditional release is to protect the public, reduce 566 recidivism, increase responsible productive behavior, and 567 provide for a successful transition of the youth from the 568 department to his or her the family. Conditional release 569 includes, but is not limited to, nonresidential community-based 570 programs. 571 (13) "Court," unless otherwise expressly stated, means the 572 circuit court assigned to exercise jurisdiction under this chapter, unless otherwise expressly stated. 573 574 (14) "Day treatment" means a nonresidential, community-575 based program designed to provide therapeutic intervention to

576 youth <u>served by the department or</u> who are placed on probation or 577 conditional release or are committed to the minimum-risk 578 nonresidential level. A <u>day-treatment</u> day treatment program may 579 provide educational and <u>career and technical educational</u> 580 vocational services and shall provide case management services;

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581	individual, group, and family counseling; training designed to
582	address delinquency risk factors; and monitoring of a youth's
583	compliance with, and facilitation of a youth's completion of,
584	sanctions if ordered by the court. Program types may include,
585	but are not limited to, career programs, marine programs,
586	juvenile justice alternative schools, training and
587	rehabilitation programs, and gender-specific programs.
588	(15)(a) "Delinquency program" means any intake, probation,
589	or similar program; regional detention center or facility; or
590	community-based program, whether owned and operated by or
591	contracted by the department, or <u>institution-owned</u> institution
592	owned and operated by or contracted by the department, which
593	provides intake, supervision, or custody and care of children
594	who are alleged to be or who have been found to be delinquent
595	under this chapter.
596	(b) "Delinquency program staff" means supervisory and
597	direct care staff of a delinquency program as well as support
598	staff who have direct contact with children in a delinquency
599	program.
600	(c) "Delinquency prevention programs" means programs
601	designed for the purpose of reducing the occurrence of
602	delinquency, including criminal gang activity, and juvenile
603	arrests. The term excludes arbitration, diversionary or
604	mediation programs, and community service work or other
605	treatment available subsequent to a child committing a
606	delinquent act.
607	(16) "Department" means the Department of Juvenile Justice.
608	(17) "Designated facility" or "designated treatment
609	facility" means any facility designated by the department to

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610
     provide treatment to juvenile offenders.
611
          (18) "Detention care" means the temporary care of a child
612
     in secure or, nonsecure, or home detention, pending a court
     adjudication or disposition or execution of a court order. There
613
614
     are two three types of detention care, as follows:
          (a) "Secure detention" means temporary custody of the child
615
616
     while the child is under the physical restriction of a secure
617
     detention center or facility pending adjudication, disposition,
618
     or placement.
619
           (b) "Nonsecure detention" means temporary custody of the
620
     child while the child is in a residential home in the community
621
     in a physically nonrestrictive environment under the supervision
622
     of the Department of Juvenile Justice pending adjudication,
623
     disposition, or placement.
624
          (c) "Home detention" means temporary nonsecure detention
625
     custody of the child while the child is released to the custody
626
     of the parent, guardian, or custodian in a physically
627
     nonrestrictive environment under the supervision of the
628
     department staff pending adjudication, disposition, or
629
     placement. Forms of nonsecure detention include, but are not
630
     limited to, home detention, electronic monitoring, day-reporting
631
     centers, evening-reporting centers, and nonsecure shelters.
632
     Nonsecure detention may include other requirements imposed by
633
     the court.
           (19) "Detention center or facility" means a facility used
634
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betention center of facility means a facility used
 pending court adjudication or disposition or execution of court
 order for the temporary care of a child alleged or found to have
 committed a violation of law. A detention center or facility
 <u>provides may provide</u> secure or nonsecure custody. A facility

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639	used for the commitment of adjudicated delinquents $\mathrm{\underline{is}}\ \mathrm{\underline{shall}}$ not
640	be considered a detention center or facility.
641	(20) "Detention hearing" means a hearing for the court to
642	determine if a child should be placed in temporary custody, as
643	provided for under part V in delinquency cases.
644	(21) "Disposition hearing" means a hearing in which the
645	court determines the most appropriate dispositional services in
646	the least restrictive available setting provided for under part
647	VII, in delinquency cases.
648	(22) "Family" means a collective of persons, consisting of
649	a child and a parent, guardian, adult custodian, or adult
650	relative, in which:
651	(a) The persons reside in the same house or living unit; or
652	(b) The parent, guardian, adult custodian, or adult
653	relative has a legal responsibility by blood, marriage, or court
654	order to support or care for the child.
655	(23) "Family in need of services" <u>has the same meaning as</u>
656	provided in s. 943.03 means a family that has a child for whom
657	there is no pending investigation into an allegation of abuse,
658	neglect, or abandonment or no current supervision by the
659	department or the Department of Children and Family Services for
660	an adjudication of dependency or delinquency. The child must
661	also have been referred to a law enforcement agency or the
662	department for:
663	(a) Running away from parents or legal custodians;
664	(b) Persistently disobeying reasonable and lawful demands
665	of parents or legal custodians, and being beyond their control;
666	or

667

(c) Habitual truancy from school.

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668	(24) "Foster care" means care provided a child in a foster
669	family or boarding home, group home, agency boarding home, child
670	care institution, or any combination thereof.
671	(25) "Habitually truant" means that:
672	(a) The child has 15 unexcused absences within 90 calendar
673	days with or without the knowledge or justifiable consent of the
674	child's parent or legal guardian, is subject to compulsory
675	school attendance under s. 1003.21(1) and (2)(a), and is not
676	exempt under s. 1003.21(3), s. 1003.24, or any other exemptions
677	specified by law or the rules of the State Board of Education.
678	(b) Escalating activities to determine the cause, and to
679	attempt the remediation, of the child's truant behavior under
680	ss. 1003.26 and 1003.27 have been completed.
681	
682	If a child who is subject to compulsory school attendance is
683	responsive to the interventions described in ss. 1003.26 and
684	1003.27 and has completed the necessary requirements to pass the
685	current grade as indicated in the district pupil progression
686	plan, the child shall not be determined to be habitually truant
687	and shall be passed. If a child within the compulsory school
688	attendance age has 15 unexcused absences within 90 calendar days
689	or fails to enroll in school, the state attorney may file a
690	child-in-need-of-services petition. Before filing a petition,
691	the child must be referred to the appropriate agency for
692	evaluation. After consulting with the evaluating agency, the
693	state attorney may elect to file a child-in-need-of-services
694	petition.
695	(c) A school representative, designated according to school
696	board policy, and a juvenile probation officer of the department

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7-00541D-14 2014700 697 have jointly investigated the truancy problem or, if that was 698 not feasible, have performed separate investigations to identify 699 conditions that could be contributing to the truant behavior; 700 and if, after a joint staffing of the case to determine the 701 necessity for services, such services were determined to be 702 needed, the persons who performed the investigations met jointly 703 with the family and child to discuss any referral to appropriate 704 community agencies for economic services, family or individual 705 counseling, or other services required to remedy the conditions 706 that are contributing to the truant behavior. 707 (d) The failure or refusal of the parent or legal guardian 708 or the child to participate, or make a good faith effort to 709 participate, in the activities prescribed to remedy the truant 710 behavior, or the failure or refusal of the child to return to 711 school after participation in activities required by this 712 subsection, or the failure of the child to stop the truant 713 behavior after the school administration and the department have 714 worked with the child as described in s. 1003.27(3) shall be 715 handled as prescribed in s. 1003.27. 716 (26) "Halfway house" means a community-based residential 717 program for 10 or more committed delinquents at the moderate-718 risk commitment level which is operated or contracted by the 719 department. 720 (24) (24) (27) "Intake" means the initial acceptance and 721 screening by the department or juvenile assessment center 722 personnel of a complaint or a law enforcement report or probable 723 cause affidavit of delinquency, family in need of services, or

724 child in need of services to determine the recommendation to be 725 taken in the best interests of the child, the family, and the

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7-00541D-14 2014700 726 community. The emphasis of intake is on diversion and the least 727 restrictive available services and. Consequently, intake 728 includes such alternatives such as: 729 (a) The disposition of the complaint, report, or probable cause affidavit without court or public agency action or 730 731 judicial handling, if when appropriate. 732 (b) The referral of the child to another public or private 733 agency, if when appropriate. 734 (c) The recommendation by the department juvenile probation 735 officer of judicial handling, if when appropriate and warranted. 736 (25) (28) "Judge" means the circuit judge exercising 737 jurisdiction pursuant to this chapter. 738 (26) (29) "Juvenile justice continuum" includes, but is not 739 limited to, delinquency prevention programs and services 740 designed for the purpose of preventing or reducing delinquent 741 acts, including criminal activity by criminal gangs, and 742 juvenile arrests, as well as programs and services targeted at 743 children who have committed delinquent acts $_{\overline{r}}$ and $\frac{children}{children}$ who 744 have previously been committed to residential treatment programs 745 for delinquents. The term includes children-in-need-of-services 746 and families-in-need-of-services programs under chapter 984; 747 conditional release; substance abuse and mental health programs; 748 educational and career programs; recreational programs; 749 community services programs; community service work programs; 750 mother-infant programs; and alternative dispute resolution 751 programs serving children at risk of delinquency and their 752 families, whether offered or delivered by state or local 753 governmental entities, public or private for-profit or not-for-754 profit organizations, or religious or charitable organizations.

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7-00541D-14 2014700 755 (27) (30) "Juvenile probation officer" means the authorized 756 agent of the department who performs the intake, case 757 management, or supervision functions. 758 (28) (31) "Legal custody or guardian" means a legal status 759 created by court order or letter of guardianship which vests in 760 a custodian of the person or guardian, whether an agency or an 761 individual, the right to have physical custody of the child and 762 the right and duty to protect, train, and discipline the child 763 and to provide him or her with food, shelter, education, and 764 ordinary medical, dental, psychiatric, and psychological care. 765 (29) (32) "Licensed child-caring agency" means a person, 766 society, association, or agency licensed by the Department of 767 Children and Families Family Services to care for, receive, and 768 board children.

769 <u>(30)(33)</u> "Licensed health care professional" means a 770 physician licensed under chapter 458, an osteopathic physician 771 licensed under chapter 459, a nurse licensed under part I of 772 chapter 464, a physician assistant licensed under chapter 458 or 773 chapter 459, or a dentist licensed under chapter 466.

774 <u>(31)(34)</u> "Likely to injure oneself" means that, as 775 evidenced by violent or other actively self-destructive 776 behavior, it is more likely than not that within a 24-hour 777 period the child will attempt to commit suicide or inflict 778 serious bodily harm on himself or herself.

779 <u>(32) (35)</u> "Likely to injure others" means that it is more 780 likely than not that within a 24-hour period the child will 781 inflict serious and unjustified bodily harm on another person.

782 (33)(36) "Mediation" means a process whereby a neutral 783 third person called a mediator acts to encourage and facilitate

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784	the resolution of a dispute between two or more parties. It is
785	an informal and nonadversarial process with the objective of
786	helping the disputing parties reach a mutually acceptable and
787	voluntary agreement. In mediation, decisionmaking authority
788	rests with the parties. The role of the mediator includes, but
789	is not limited to, assisting the parties in identifying issues,
790	fostering joint problem solving, and exploring settlement
791	alternatives.
792	<u>(34)</u> "Mother-infant program" means a residential
793	program designed to serve the needs of juvenile mothers or
794	expectant juvenile mothers who are committed as delinquents $_{m au}$
795	which is operated or contracted by the department. A mother-
796	infant program facility must be licensed as a child care
797	facility under s. 402.308 and must provide the services and
798	support necessary to enable each juvenile mother committed to
799	the facility to provide for the needs of her <u>infant</u> infants who,
800	upon agreement of the mother, may accompany her in the program.
801	(35) (38) "Necessary medical treatment" means care that
802	which is necessary within a reasonable degree of medical
803	certainty to prevent the deterioration of a child's condition or
804	to alleviate immediate pain of a child.
805	(36) <mark>(39)</mark> "Next of kin" means an adult relative of a child
806	who is the child's brother, sister, grandparent, aunt, uncle, or
807	first cousin.
808	(37) (40) "Ordinary medical care" means medical procedures
809	that are administered or performed on a routine basis and
810	includes, but is include, but are not limited to, inoculations,
811	physical examinations, remedial treatment for minor illnesses

812 and injuries, preventive services, medication management,

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813	chronic disease detection and treatment, and other medical
814	procedures that are administered or performed on a routine basis
815	and that do not involve hospitalization, surgery, the use of
816	general anesthesia, or the provision of psychotropic
817	medications.
818	(38) <mark>(41)</mark> "Parent" means a woman who gives birth to a child
819	and a man whose consent to the adoption of the child would be
820	required under s. 63.062(1). If a child has been legally
821	adopted, the term "parent" means the adoptive mother or father
822	of the child. The term does not include an individual whose
823	parental relationship to <u>a</u> the child has been legally
824	<code>terminated_{{m au}}</code> or an alleged or prospective <code>parent_{{m au}}</code> unless the
825	parental status falls within the terms of either s. 39.503(1) or
826	s. 63.062(1).
827	(39) (42) "Preliminary screening" means the gathering of
828	preliminary information to be used in determining a child's need
829	for further evaluation or assessment or for referral for other
830	substance abuse services through means such as psychosocial
831	interviews $\underline{\prime} eq$ urine and breathalyzer screenings $\underline{\prime} eq$ and reviews of
832	available educational, delinquency, and dependency records of
833	the child.
834	(40) "Prevention" means programs, strategies, initiatives,
835	and networks designed to keep children from making initial or
836	further contact with the juvenile justice system.
837	(43) "Preventive services" means social services and other
838	supportive and rehabilitative services provided to the parent of
839	the child, the legal guardian of the child, or the custodian of
840	the child and to the child for the purpose of averting the

841 removal of the child from the home or disruption of a family

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7-00541D-14 2014700 842 which will or could result in the placement of a child in foster 843 care. Social services and other supportive and rehabilitative 844 services shall promote the child's need for a safe, continuous, 845 stable living environment and shall promote family autonomy and 846 shall strengthen family life as the first priority whenever 847 possible. 848 (41) (44) "Probation" means the legal status of probation 849 created by law and court order in cases involving a child who 850 has been found to have committed a delinquent act. Probation is 851 an individualized program in which the freedom of the child is limited and the child is restricted to noninstitutional quarters 852 853 or restricted to the child's home in lieu of commitment to the 854 custody of the department. Youth on probation may be assessed 855 and classified for placement in day-treatment probation programs 856 designed for youth who represent a minimum risk to themselves 857 and public safety and who do not require placement and services 858 in a residential setting. 859 (42) (45) "Relative" means a grandparent, great-grandparent,

859 <u>(42)(45)</u> "Relative" means a grandparent, great-grandparent, 860 sibling, first cousin, aunt, uncle, great-aunt, great-uncle, 861 niece, or nephew, whether related by the whole or half blood, by 862 affinity, or by adoption. The term does not include a 863 stepparent.

864 <u>(43) (46)</u> "Restrictiveness level" means the level of 865 programming and security provided by programs that service the 866 supervision, custody, care, and treatment needs of committed 867 children. Sections 985.601(10) and 985.721 apply to children 868 placed in programs at any residential commitment level. The 869 restrictiveness levels of commitment are as follows:

870

(a) Minimum-risk nonresidential.-Programs or program models

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7-00541D-14 2014700 at this commitment level work with youth who remain in the 871 872 community and participate at least 5 days per week in a day-873 treatment day treatment program. Youth assessed and classified 874 for programs at this commitment level represent a minimum risk 875 to themselves and public safety and do not require placement and 876 services in residential settings. Youth in this level have full 877 access to, and reside in, the community. Youth who have been 878 found to have committed delinquent acts that involve firearms, 879 that are sexual offenses, or that would be life felonies or 880 first-degree first degree felonies if committed by an adult may 881 not be committed to a program at this level. 882 (b) Low-risk residential.-Programs or program models at 883 this commitment level are residential but may allow youth to 884 have unsupervised access to the community. Residential 885 facilities shall have no more than 165 beds each, including 886 campus-style programs, unless those campus-style programs 887 include more than one level of restrictiveness, provide 888 multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately 889 890 in distinct locations on the same property. Youth assessed and 891 classified for placement in programs at this commitment level 892 represent a low risk to themselves and public safety but do 893 require placement and services in residential settings. Children 894 who have been found to have committed delinquent acts that 895 involve firearms, delinguent acts that are sexual offenses, or 896 delinquent acts that would be life felonies or first degree 897 felonies if committed by an adult shall not be committed to a 898 program at this level. 899 (b) (c) Nonsecure Moderate risk residential.-Programs or

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7-00541D-14 2014700 900 program models at this commitment level are residential but may 901 allow youth to have supervised access to the community. 902 Facilities at this commitment level are either environmentally 903 secure or τ staff secure, or are hardware secure hardware-secure 904 with walls, fencing, or locking doors. Residential facilities at 905 this commitment level may shall have up to 90 no more than 165 906 beds each, including campus-style programs, unless those campus-907 style programs include more than one level of restrictiveness, 908 provide multilevel education and treatment program programs 909 using different treatment protocols $_{\boldsymbol{\tau}}$ and have facilities that 910 coexist separately in distinct locations on the same property. 911 Facilities at this commitment level shall provide 24-hour awake 912 supervision, custody, care, and treatment of residents. Youth 913 assessed and classified for placement in programs at this commitment level represent a low or moderate risk to public 914 915 safety and require close supervision. The staff at a facility at 916 this commitment level may seclude a child who is a physical 917 threat to himself, or herself, or others. Mechanical restraint 918 may also be used when necessary. 919 (c) (d) High-risk residential.-Programs or program models at

920 this commitment level are residential and do not allow youth to 921 have access to the community, except that temporary release 922 providing community access for up to 72 continuous hours may be 923 approved by a court for a youth who has made successful progress in his or her program so that in order for the youth may respond 924 925 to attend a family emergency or, during the final 60 days of his 926 or her placement, to visit his or her home, enroll in school or 927 a career and technical education vocational program, complete a job interview, or participate in a community service project. 928

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7-00541D-14 2014700 929 High-risk residential facilities are hardware secure hardware-930 secure with perimeter fencing and locking doors. Residential 931 facilities at this commitment level may shall have up to 90 no 932 more than 165 beds each, including campus-style programs, unless 933 those campus-style programs include more than one level of 934 restrictiveness, provide multilevel education and treatment 935 program programs using different treatment protocols $_{\tau}$ and have 936 facilities that coexist separately in distinct locations on the 937 same property. Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of 938 939 residents. Youth assessed and classified for this level of 940 placement require close supervision in a structured residential 941 setting. Placement in programs at this level is prompted by a 942 concern for public safety which that outweighs placement in 943 programs at lower commitment levels. The staff at a facility at 944 this commitment level may seclude a child who is a physical 945 threat to himself, or herself, or others. Mechanical restraint 946 may also be used when necessary. The facility may provide for 947 single cell occupancy, except that youth may be housed together 948 during prerelease transition. 949 (d) (e) Maximum-risk residential.-Programs or program models

950 at this commitment level include juvenile correctional 951 facilities and juvenile prisons. The programs at this commitment 952 level are long-term residential and do not allow youth to have 953 access to the community. Facilities at this commitment level are 954 maximum-custody and hardware secure, hardware-secure with 955 perimeter security fencing and locking doors. Residential 956 facilities at this commitment level may shall have up to 90 no 957 more than 165 beds each, including campus-style programs, unless

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7-00541D-14 2014700 958 those campus-style programs include more than one level of 959 restrictiveness, provide multilevel education and treatment 960 program programs using different treatment protocols, and have 961 facilities that coexist separately in distinct locations on the 962 same property. Facilities at this commitment level shall provide 963 24-hour awake supervision, custody, care, and treatment of 964 residents. The staff at a facility at this commitment level may 965 seclude a child who is a physical threat to himself, or herself, 966 or others. Mechanical restraint may also be used when necessary. 967 Facilities at this commitment level The facility shall provide 968 for single cell occupancy, except that youth may be housed 969 together during prerelease transition. Youth assessed and 970 classified for this level of placement require close supervision 971 in a maximum security residential setting. Placement in a 972 program at this level is prompted by a demonstrated need to 973 protect the public.

974 <u>(44)</u> "Respite" means a placement that is available for 975 the care, custody, and placement of a youth charged with 976 domestic violence as an alternative to secure detention or for 977 placement of a youth when a shelter bed for a child in need of 978 services or a family in need of services is unavailable.

979 <u>(45)</u> (48) "Secure detention center or facility" means a 980 physically restricting facility for the temporary care of 981 children, pending adjudication, disposition, or placement.

982 <u>(46)</u> "Shelter" means a place for the temporary care of 983 a child who is alleged to be or who has been found to be 984 delinquent.

985 (50) "Shelter hearing" means a hearing provided for under 986 s. 984.14 in family-in-need-of-services cases or child-in-need-

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987	of-services cases.
988	(51) "Staff-secure shelter" means a facility in which a
989	child is supervised 24 hours a day by staff members who are
990	awake while on duty. The facility is for the temporary care and
991	assessment of a child who has been found to be dependent, who
992	has violated a court order and been found in contempt of court,
993	or whom the Department of Children and Family Services is unable
994	to properly assess or place for assistance within the continuum
995	of services provided for dependent children.
996	(47) (52) "Substance abuse" means using, without medical
997	reason, any psychoactive or mood-altering drug, including
998	alcohol, in such a manner as to induce impairment resulting in
999	dysfunctional social behavior.
1000	(48) (53) "Taken into custody" means the status of a child
1001	immediately when temporary physical control over the child is
1002	attained by a person authorized by law, pending the child's
1003	release, detention, placement, or other disposition as
1004	authorized by law.
1005	(49) (54) "Temporary legal custody" means the relationship
1006	that a juvenile court creates between a child and an adult
1007	relative of the child, adult nonrelative approved by the court,
1008	or other person until a more permanent arrangement is ordered.
1009	Temporary legal custody confers upon the custodian the right to
1010	have temporary physical custody of the child and the right and
1011	duty to protect, train, and discipline the child and to provide
1012	the child with food, shelter, and education, and ordinary
1013	medical, dental, psychiatric, and psychological care, unless
1014	these rights and duties are otherwise enlarged or limited by the

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court order establishing the temporary legal custody

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1016 relationship.

(50) (55) "Temporary release" means the terms and conditions 1018 under which a child is temporarily released from a residential 1019 commitment facility or allowed home visits. If the temporary 1020 release is from a nonsecure moderate-risk residential facility, a high-risk residential facility, or a maximum-risk residential 1022 facility, the terms and conditions of the temporary release must 1023 be approved by the child, the court, and the facility. The term includes periods during which the child is supervised pursuant 1025 to a conditional release program or a period during which the 1026 child is supervised by a juvenile probation officer or other 1027 nonresidential staff of the department or staff employed by an 1028 entity under contract with the department.

1029 <u>(51)(56)</u> "Transition-to-adulthood services" means services 1030 that are provided for youth in the custody of the department or 1031 under the supervision of the department and that have the 1032 objective of instilling the knowledge, skills, and aptitudes 1033 essential to a socially integrated, self-supporting adult life. 1034 The services may include, but are not limited to:

(a) Assessment of the youth's ability and readiness foradult life.

1037 (b) A plan for the youth to acquire the knowledge,
1038 information, and counseling necessary to make a successful
1039 transition to adulthood.

1040 (c) Services that have proven effective toward achieving 1041 the transition to adulthood.

1042(52) "Trauma-informed care" means the provision of services1043to children with a history of trauma in a manner that recognizes1044the symptoms and acknowledges the role the trauma has played in

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1045	the child's life. Trauma may include, but is not limited to,
1046	community and school violence, physical or sexual abuse,
1047	neglect, medical difficulties, and domestic violence.
1048	<u>(53)</u> "Violation of law" or "delinquent act" means a
1049	violation of any law of this state, the United States, or any
1050	other state which is a misdemeanor or a felony or a violation of
1051	a county or municipal ordinance which would be punishable by
1052	incarceration if the violation were committed by an adult.
1053	(54) (58) "Waiver hearing" means a hearing provided for
1054	under s. 985.556(4).
1055	Section 4. Subsections (4) and (5) of section 985.0301,
1056	Florida Statutes, are amended to read:
1057	985.0301 Jurisdiction
1058	(4)(a) Petitions alleging delinquency shall be filed in the
1059	county where the delinquent act or violation of law occurred $_{\cdot \overline{}}$
1060	but The circuit court for that county may transfer the case to
1061	the circuit court of the circuit in which the child resides or
1062	will reside at the time of detention or placement for
1063	dispositional purposes. A child who has been detained <u>may</u> $rac{ ext{shall}}{ ext{shall}}$
1064	be transferred to the appropriate detention center or facility
1065	in the circuit in which the child resides or will reside at the
1066	time of detention or other placement directed by the receiving
1067	court.
1068	(b) The jurisdiction to be exercised by the court when a
1069	child is taken into custody before the filing of a petition
1070	under subsection (2) shall be exercised by the circuit court for
1071	the county in which the child is taken into custody, and such
1072	court has which court shall have personal jurisdiction of the
1073	child and the child's parent or legal guardian. If the child has

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1074	been detained, upon the filing of a petition in the appropriate
1075	circuit court, the court that is exercising initial personal
1076	jurisdiction of the person of the child shall , if the child has
1077	been detained, immediately order the child to be transferred to
1078	the detention center or facility or other placement as ordered
1079	by the court having subject matter jurisdiction of the case.
1080	(5)(a) Notwithstanding <u>s. 743.07</u> , ss. 743.07, 985.43,
1081	985.433, 985.435, 985.439, and 985.441, and except as provided
1082	in <u>paragraphs (b) and (c)</u> ss. 985.461 and 985.465 and paragraph
1083	(f) , when the jurisdiction of <u>a</u> any child who is alleged to have
1084	committed a delinquent act or violation of law is obtained, the
1085	court <u>retains</u> shall retain jurisdiction <u>to dispose the case</u> ,
1086	unless relinquished by its order, until the child reaches 19
1087	years of age, with the same power over the child which the court
1088	had before the child became an adult. For the purposes of s.
1089	985.461, the court may retain jurisdiction for an additional 365
1090	days following the child's 19th birthday if the child is
1091	participating in transition-to-adulthood services. The
1092	additional services do not extend involuntary court-sanctioned
1093	residential commitment and therefore require voluntary
1094	participation by the affected youth.
1095	(b) Unless relinquished by its own order, the court retains
1096	jurisdiction over a child on probation until the child reaches
1097	<u>19 years of age Notwithstanding ss. 743.07 and 985.455(3), the</u>
1098	term of any order placing a child in a probation program must be
1099	until the child's 19th birthday unless he or she is released by

1099 until the child's 19th birthday unless he or she is released by 1100 the court on the motion of an interested party or on his or her 1101 own motion.

(c) Unless relinquished by its own order, the court retains

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7-00541D-14 2014700 1103 jurisdiction over a child committed to the department until the 1104 child reaches 21 years of age, specifically for the purpose of 1105 allowing the child to complete the department's commitment 1106 program, including conditional release supervision. 1107 (d) The court retains jurisdiction over a juvenile sex offender as defined in s. 985.475 who has been placed in a 1108 1109 community-based treatment alternative program with supervision 1110 or in a program or facility for juvenile sex offenders pursuant to s. 985.48 until the juvenile sex offender reaches 21 years of 1111 1112 age, specifically for the purpose of completing the program. 1113 (c) Notwithstanding ss. 743.07 and 985.455(3), the term of 1114 the commitment must be until the child is discharged by the 1115 department or until he or she reaches the age of 21 years. Notwithstanding ss. 743.07, 985.435, 985.437, 985.439, 985.441, 1116 1117 985.455, and 985.513, and except as provided in this section, a 1118 child may not be held under a commitment from a court under s. 1119 985.439, s. 985.441(1)(a) or (b), or s. 985.455 after becoming 1120 21 years of age. 1121 (d) The court may retain jurisdiction over a child 1122 committed to the department for placement in a juvenile prison 1123 or in a high-risk or maximum-risk residential commitment program 1124 to allow the child to participate in a juvenile conditional 1125 release program pursuant to s. 985.46. The jurisdiction of the 1126 court may not be retained after the child's 22nd birthday. 1127 However, if the child is not successful in the conditional 1128 release program, the department may use the transfer procedure under s. 985.441(4). 1129 1130 (c) The court may retain jurisdiction over a child committed to the department for placement in an intensive 1131

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7-00541D-14 2014700 1132 residential treatment program for 10-year-old to 13-year-old 1133 offenders, in the residential commitment program in a juvenile 1134 prison or in a residential sex offender program until the child 1135 reaches the age of 21. If the court exercises this jurisdiction 1136 retention, it shall do so solely for the purpose of the child completing the intensive residential treatment program for 10-1137 1138 year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison, or in a residential sex offender 1139 program. Such jurisdiction retention does not apply for other 1140 programs, other purposes, or new offenses. 1141 1142 (f) The court may retain jurisdiction over a child

1143 committed to a juvenile correctional facility or a juvenile
1144 prison until the child reaches the age of 21 years, specifically
1145 for the purpose of allowing the child to complete such program.

1146 (g) The court may retain jurisdiction over a juvenile 1147 sexual offender who has been placed in a program or facility for 1148 juvenile sexual offenders until the juvenile sexual offender 1149 reaches the age of 21, specifically for the purpose of 1150 completing the program.

1151 (e) (h) The court may retain jurisdiction over a child and 1152 the child's parent or legal guardian whom the court has ordered 1153 to pay restitution until the restitution order is satisfied. To 1154 retain jurisdiction, the court shall enter a restitution order, 1155 which is separate from any disposition or order of commitment, 1156 on or before prior to the date that the court's jurisdiction 1157 would cease under this section. The contents of the restitution 1158 order are shall be limited to the child's name and address, the 1159 name and address of the parent or legal guardian, the name and address of the payee, the case number, the date and amount of 1160

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1161	restitution ordered, any amount of restitution paid, the amount
1162	of restitution due and owing, and a notation that costs,
1163	interest, penalties, and attorney fees may also be due and
1164	owing. The terms of the restitution order are subject to s.
1165	775.089(5).
1166	(f) (i) This subsection does not prevent the exercise of
1167	jurisdiction by any court having jurisdiction of the child if
1168	the child, after becoming an adult, commits a violation of law.
1169	Section 5. Subsections (2) and (4) of section 985.037 ,
1170	Florida Statutes, are amended to read:
1171	985.037 Punishment for contempt of court; alternative
1172	sanctions
1173	(2) PLACEMENT IN A SECURE <u>DETENTION</u> FACILITYA child may
1174	be placed in a secure <u>detention</u> facility for purposes of
1175	punishment for contempt of court if alternative sanctions are
1176	unavailable or inappropriate $_{m{ au}}$ or if the child has already been
1177	ordered to serve an alternative sanction but failed to comply
1178	with the sanction. A delinquent child who has been held in
1179	direct or indirect contempt may be placed in a secure detention
1180	facility <u>for up to</u> not to exceed 5 days for a first offense and
1181	<u>up to</u> not to exceed 15 days for a second or subsequent offense.
1182	(4) CONTEMPT OF COURT SANCTIONS; PROCEDURE AND DUE
1183	PROCESS
1184	(a) If a child is charged with direct contempt of court,
1185	including traffic court, the court may impose an authorized
1186	sanction immediately. The court must hold a hearing to determine
1187	if the child committed direct contempt. Due process must be
1188	afforded to the child during such hearing.
1189	(b) If a child is charged with indirect contempt of court,

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1	7-00541D-14 2014700
1190	the court must hold a hearing within 24 hours to determine
1191	whether the child committed indirect contempt of a valid court
1192	order. At the hearing, the following due process rights must be
1193	provided to the child:
1194	1. Right to a copy of the order to show cause alleging
1195	facts supporting the contempt charge.
1196	2. Right to an explanation of the nature and the
1197	consequences of the proceedings.
1198	3. Right to legal counsel and the right to have legal
1199	counsel appointed by the court if the juvenile is indigent,
1200	under s. 985.033.
1201	4. Right to confront witnesses.
1202	5. Right to present witnesses.
1203	6. Right to have a transcript or record of the proceeding.
1204	7. Right to appeal to an appropriate court.
1205	
1206	The child's parent or guardian may address the court regarding
1207	the due process rights of the child. <u>Upon motion by the defense</u>
1208	or state attorney, the court shall review the placement of the
1209	child every 72 hours to determine whether it is appropriate for
1210	the child to remain in the facility.
1211	(c) The court may not order that a child be placed in a
1212	secure <u>detention</u> facility <u>as</u> for punishment for contempt unless
1213	the court determines that an alternative sanction is
1214	inappropriate or unavailable or that the child was initially
1215	ordered to an alternative sanction and did not comply with the
1216	alternative sanction. The court is encouraged to order a child
1217	to perform community service, up to the maximum number of hours,
1218	<u>if</u> where appropriate before ordering that the child be placed in

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1247

7-00541D-14 2014700 1219 a secure detention facility as punishment for contempt of court. 1220 (d) In addition to any other sanction imposed under this 1221 section, the court may direct the Department of Highway Safety 1222 and Motor Vehicles to withhold issuance of, or suspend, a 1223 child's driver driver's license or driving privilege. The court 1224 may order that a child's driver driver's license or driving 1225 privilege be withheld or suspended for up to 1 year for a first 1226 offense of contempt and up to 2 years for a second or subsequent 1227 offense. If the child's driver driver's license or driving 1228 privilege is suspended or revoked for any reason at the time the 1229 sanction for contempt is imposed, the court shall extend the 1230 period of suspension or revocation by the additional period 1231 ordered under this paragraph. If the child's driver driver's 1232 license is being withheld at the time the sanction for contempt 1233 is imposed, the period of suspension or revocation ordered under this paragraph shall begin on the date on which the child is 1234 1235 otherwise eligible to drive. 1236 Section 6. Section 985.105, Florida Statutes, is repealed. 1237 Section 7. Subsection (1) of section 985.11, Florida 1238 Statutes, is amended to read: 1239 985.11 Fingerprinting and photographing.-1240 (1) (a) A child who is charged with or found to have 1241 committed an offense that would be a felony if committed by an 1242 adult shall be fingerprinted, and the fingerprints shall must be 1243 submitted to the Department of Law Enforcement as provided in s. 1244 943.051(3)(a). 1245 (b) Unless the child is issued a civil citation or participating in a similar diversion program pursuant to s. 1246

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985.12, a child who is charged with or found to have committed

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1248	one of the following offenses shall be fingerprinted, and the
1249	fingerprints shall be submitted to the Department of Law
1250	Enforcement as provided in s. 943.051(3)(b):
1251	1. Assault, as defined in s. 784.011.
1252	2. Battery, as defined in s. 784.03.
1253	3. Carrying a concealed weapon $_{m{ au}}$ as defined in s. 790.01(1).
1254	4. Unlawful use of destructive devices or bombs $_{ au}$ as defined
1255	in s. 790.1615(1).
1256	5. Neglect of a child, as defined in s. 827.03(1)(e).
1257	6. Assault on a law enforcement officer, a firefighter, or
1258	other specified officers $_{m{ au}}$ as defined in s. 784.07(2)(a).
1259	7. Open carrying of a weapon $_{m{ au}}$ as defined in s. 790.053.
1260	8. Exposure of sexual organs $_{m{ au}}$ as defined in s. 800.03.
1261	9. Unlawful possession of a firearm $_{\overline{ au}}$ as defined in s.
1262	790.22(5).
1263	10. Petit theft $_{ au}$ as defined in s. 812.014.
1264	11. Cruelty to animals $_{ au}$ as defined in s. 828.12(1).
1265	12. Arson $_{m{ au}}$ resulting in bodily harm to a firefighter $_{m{ au}}$ as
1266	defined in s. 806.031(1).
1267	13. Unlawful possession or discharge of a weapon or firearm
1268	at a school-sponsored event or on school property as defined in
1269	s. 790.115.
1270	
1271	A law enforcement agency may fingerprint and photograph a child
1272	taken into custody upon probable cause that such child has
1273	committed any other violation of law, as the agency deems
1274	appropriate. Such fingerprint records and photographs shall be
1275	retained by the law enforcement agency in a separate file, and
1276	these records and all copies thereof must be marked "Juvenile

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1277	Confidential." These records are not available for public
1278	disclosure and inspection under s. 119.07(1) except as provided
1279	in ss. 943.053 and 985.04(2), but are shall be available to
1280	other law enforcement agencies, criminal justice agencies, state
1281	attorneys, the courts, the child, the parents or legal
1282	custodians of the child, their attorneys, and any other person
1283	authorized by the court to have access to such records. In
1284	addition, such records may be submitted to the Department of Law
1285	Enforcement for inclusion in the state criminal history records
1286	and used by criminal justice agencies for criminal justice
1287	purposes. These records may, in the discretion of the court, be
1288	open to inspection by anyone upon a showing of cause. The
1289	fingerprint and photograph records shall be produced in the
1290	court whenever directed by the court. Any photograph taken
1291	pursuant to this section may be shown by a law enforcement
1292	officer to any victim or witness of a crime for the purpose of
1293	identifying the person who committed such crime.
1294	(c) The court <u>is</u> shall be responsible for the
1295	fingerprinting of <u>a</u> any child at the disposition hearing if the
1296	child has been adjudicated or had adjudication withheld for any
1297	felony in the case currently before the court.
1298	Section 8. Subsection (2) of section 985.14, Florida
1299	Statutes, is amended to read:
1300	985.14 Intake and case management system
1301	(2) The intake process shall be performed by the department

1302 <u>or juvenile assessment center personnel</u> through a case 1303 management system. The purpose of the intake process is to 1304 assess the child's needs and risks and to determine the most 1305 appropriate treatment plan and setting for the child's

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7-00541D-14 2014700 1306 programmatic needs and risks. The intake process consists of an 1307 initial assessment and may be followed by a full mental health, 1308 substance abuse, or psychosexual evaluation. The intake process 1309 shall result in choosing the most appropriate services through a 1310 balancing of the interests and needs of the child with those of 1311 the family and the community public. The juvenile probation 1312 officer shall make be responsible for making informed decisions and recommendations to other agencies, the state attorney, and 1313 the courts so that the child and family may receive the least 1314 1315 intrusive service alternative throughout the judicial process. 1316 The department shall establish uniform procedures through which 1317 for the juvenile probation officer may to provide a preliminary 1318 screening of the child and family for substance abuse and mental 1319 health services before prior to the filing of a petition or as 1320 soon as possible thereafter and before prior to a disposition 1321 hearing. 1322 Section 9. Section 985.145, Florida Statutes, is amended to 1323 read: 1324 985.145 Responsibilities of the department juvenile 1325 probation officer during intake; screenings and assessments.-1326 (1) The department juvenile probation officer shall serve

1327 as the primary case manager for the purpose of managing, 1328 coordinating, and monitoring the services provided to the child. 1329 Each program administrator within the Department of Children and 1330 Families Family Services shall cooperate with the primary case 1331 manager in carrying out the duties and responsibilities 1332 described in this section. In addition to duties specified in 1333 other sections and through departmental rules, the department 1334 assigned juvenile probation officer shall be responsible for the

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1335 following: 1336 (a) Reviewing probable cause affidavit.-The department juvenile probation officer shall make a preliminary 1337 1338 determination as to whether the report, affidavit, or complaint 1339 is complete, consulting with the state attorney as may be 1340 necessary. A report, affidavit, or complaint alleging that a 1341 child has committed a delinquent act or violation of law shall 1342 be made to the intake office operating in the county in which 1343 the child is found or in which the delinquent act or violation 1344 of law occurred. Any person or agency having knowledge of the 1345 facts may make such a written report, affidavit, or complaint 1346 and shall furnish to the intake office facts sufficient to establish the jurisdiction of the court and to support a finding 1347 1348 by the court that the child has committed a delinquent act or violation of law. 1349 1350 (b) Notification concerning apparent insufficiencies in 1351 probable cause affidavit.-In any case where the department 1352 juvenile probation officer or the state attorney finds that the 1353 report, affidavit, or complaint is insufficient by the standards 1354 for a probable cause affidavit, the department juvenile 1355 probation officer or state attorney shall return the report, 1356 affidavit, or complaint, without delay, to the person or agency originating the report, affidavit, or complaint or having 1357 1358 knowledge of the facts or to the appropriate law enforcement 1359 agency having investigative jurisdiction of the offense, and 1360 shall request, and the person or agency shall promptly furnish,

1361 additional information in order to comply with the standards for 1362 a probable cause affidavit.

1363

(c) Screening.-During the intake process, the department

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7-00541D-14 2014700 1364 juvenile probation officer shall screen each child or shall 1365 cause each child to be screened in order to determine: 1366 1. Appropriateness for release; referral to a diversionary 1367 program, including, but not limited to, a teen court program; 1368 referral for community arbitration; or referral to some other 1369 program or agency for the purpose of nonofficial or nonjudicial 1370 handling. 2. The presence of medical, psychiatric, psychological, 1371 1372 substance abuse, educational, or career and technical education 1373 vocational problems, or other conditions that may have caused 1374 the child to come to the attention of law enforcement or the 1375 department. The child shall also be screened to determine 1376 whether the child poses a danger to himself or herself or others 1377 in the community. The results of this screening shall be made 1378 available to the court and to court officers. In cases where 1379 such conditions are identified and a nonjudicial handling of the 1380 case is chosen, the department juvenile probation officer shall 1381 attempt to refer the child to a program or agency, together with 1382 all available and relevant assessment information concerning the 1383 child's precipitating condition. 1384 (d) Completing risk assessment instrument.-The department

(d) Completing risk assessment instrument.—The department juvenile probation officer shall ensure that a risk assessment instrument establishing the child's eligibility for detention has been accurately completed and that the appropriate recommendation was made to the court.

(e) *Rights.*-The <u>department</u> juvenile probation officer shall
inquire as to whether the child understands his or her rights to
counsel and against self-incrimination.

1392

(f) Multidisciplinary assessment.-The department juvenile

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7-00541D-14 2014700 1393 probation officer shall coordinate the multidisciplinary 1394 assessment when required, which includes the classification and 1395 placement process that determines the child's priority needs, 1396 risk classification, and treatment plan. If When sufficient 1397 evidence exists to warrant a comprehensive assessment and the 1398 child fails to voluntarily participate in the assessment 1399 efforts, the department juvenile probation officer shall inform 1400 the court of the need for the assessment and the refusal of the 1401 child to participate in such assessment. This assessment, 1402 classification, and placement process shall develop into the 1403 predisposition report. 1404 (q) Comprehensive assessment. The juvenile probation

1405 officer, Pursuant to uniform procedures established by the 1406 department and upon determining that the report, affidavit, or 1407 complaint is complete, <u>the department</u> shall:

Perform the preliminary screening and make referrals for
 a comprehensive assessment regarding the child's need for
 substance abuse treatment services, mental health services,
 intellectual disability services, literacy services, or other
 educational or treatment services.

1413 2. If indicated by the preliminary screening, provide for a 1414 comprehensive assessment of the child and family for substance 1415 abuse problems, using community-based licensed programs with 1416 clinical expertise and experience in the assessment of substance 1417 abuse problems.

1418 3. If indicated by the preliminary screening, provide for a 1419 comprehensive assessment of the child and family for mental 1420 health problems, using community-based psychologists, 1421 psychiatrists, or other licensed mental health professionals who

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7-00541D-14 2014700_ 1422 have clinical expertise and experience in the assessment of 1423 mental health problems. 1424 (h) Referrals for services.—The department juvenile

1424 (ii) Referrals for services. The <u>department</u> provenine 1425 probation officer shall make recommendations for services and 1426 facilitate the delivery of those services to the child, 1427 including any mental health services, educational services, 1428 family counseling services, family assistance services, and 1429 substance abuse services.

1430 (i) Recommendation concerning a petition.-Upon determining 1431 that the report, affidavit, or complaint complies with the 1432 standards of a probable cause affidavit and that the interests 1433 of the child and the public will be best served, the department 1434 juvenile probation officer may recommend that a delinquency 1435 petition not be filed. If such a recommendation is made, the 1436 department juvenile probation officer shall advise in writing 1437 the person or agency making the report, affidavit, or complaint, 1438 the victim, if any, and the law enforcement agency having 1439 investigative jurisdiction over the offense of the 1440 recommendation; the reasons therefor; and that the person or 1441 agency may submit, within 10 days after the receipt of such notice, the report, affidavit, or complaint to the state 1442 1443 attorney for special review. The state attorney, upon receiving 1444 a request for special review, shall consider the facts presented 1445 by the report, affidavit, or complaint \overline{r} and by the department juvenile probation officer who made the recommendation that no 1446 petition be filed, before making a final decision as to whether 1447 a petition or information should or should not be filed. 1448

1449 (j) Completing intake report.-Subject to the interagency 1450 agreement authorized under this paragraph, the department the

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7-00541D-14 2014700 1451 juvenile probation officer for each case in which a child is 1452 alleged to have committed a violation of law or delinquent act 1453 and is not detained shall submit a written report to the state 1454 attorney for each case in which a child is alleged to have 1455 committed a violation of law or delinquent act and is not 1456 detained. The report shall be submitted within 20 days after the 1457 date the child is taken into custody and must include, including 1458 the original police report, complaint, or affidavit, or a copy 1459 thereof, and including a copy of the child's prior juvenile 1460 record, within 20 days after the date the child is taken into 1461 custody. In cases in which the child is in detention, the intake 1462 office report must be submitted within 24 hours after the child is placed into detention. The intake office report may include a 1463 1464 recommendation that a petition or information be filed or that 1465 no petition or information be filed and may set forth reasons 1466 for the recommendation. The state attorney and the department 1467 may, on a district-by-district basis, enter into interagency 1468 agreements denoting the cases that will require a recommendation 1469 and those for which a recommendation is unnecessary.

1470 (2) Before Prior to requesting that a delinquency petition 1471 be filed or before prior to filing a dependency petition, the 1472 department juvenile probation officer may request the parent or 1473 legal guardian of the child to attend a course of instruction in 1474 parenting skills, training in conflict resolution, and the practice of nonviolence; to accept counseling; or to receive 1475 1476 other assistance from any agency in the community which notifies 1477 the clerk of the court of the availability of its services. If 1478 Where appropriate, the department juvenile probation officer 1479 shall request both parents or guardians to receive such parental

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7-00541D-14 2014700 1480 assistance. The department juvenile probation officer may, in 1481 determining whether to request that a delinquency petition be 1482 filed, take into consideration the willingness of the parent or 1483 legal guardian to comply with such request. The parent or 1484 guardian must provide the department juvenile probation officer with identifying information, including the parent's or 1485 1486 guardian's name, address, date of birth, social security number, 1487 and driver driver's license number or identification card number in order to comply with s. 985.039. 1488 1489 (3) If When indicated by the comprehensive assessment, the

1490 department is authorized to contract within appropriated funds 1491 for services with a local nonprofit community mental health or 1492 substance abuse agency licensed or authorized under chapter 394 1493 or chapter 397 or other authorized nonprofit social service 1494 agency providing related services. The determination of mental 1495 health or substance abuse services shall be conducted in 1496 coordination with existing programs providing mental health or 1497 substance abuse services in conjunction with the intake office.

1498 (4) Client information resulting from the screening and 1499 evaluation shall be documented under rules of the department and 1500 shall serve to assist the department juvenile probation officer 1501 in providing the most appropriate services and recommendations 1502 in the least intrusive manner. Such client information shall be 1503 used in the multidisciplinary assessment and classification of 1504 the child, but such information, and any information obtained 1505 directly or indirectly through the assessment process, is 1506 inadmissible in court before prior to the disposition hearing, 1507 unless the child's written consent is obtained. At the 1508 disposition hearing, documented client information shall serve

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1509
      to assist the court in making the most appropriate custody,
1510
      adjudicatory, and dispositional decision.
1511
            (5) If the screening and assessment indicate that the
1512
      interests of the child and the public will be best served, the
1513
      department juvenile probation officer, with the approval of the
1514
      state attorney, may refer the child for care, diagnostic, and
1515
      evaluation services; substance abuse treatment services; mental
1516
      health services; intellectual disability services; a
1517
      diversionary, arbitration, or mediation program; community
1518
      service work; or other programs or treatment services
1519
      voluntarily accepted by the child and the child's parents or
1520
      legal guardian. If a child volunteers to participate in any work
      program under this chapter or volunteers to work in a specified
1521
1522
      state, county, municipal, or community service organization
1523
      supervised work program or to work for the victim, the child is
1524
      considered an employee of the state for the purposes of
1525
      liability. In determining the child's average weekly wage,
1526
      unless otherwise determined by a specific funding program, all
1527
      remuneration received from the employer is considered a
1528
      gratuity, and the child is not entitled to any benefits
1529
      otherwise payable under s. 440.15 regardless of whether the
1530
      child may be receiving wages and remuneration from other
1531
      employment with another employer and regardless of the child's
1532
      future wage-earning capacity.
1533
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(6) The victim, if any, and the law enforcement agency that investigated the offense shall be notified immediately by the state attorney of the action taken under subsection (5).

1536 Section 10. Section 985.17, Florida Statutes, is created to 1537 read:

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1538	985.17 Prevention services
1539	(1) Prevention services decrease recidivism by addressing
1540	the needs of at-risk youth and their families, preventing
1541	further involvement in the juvenile justice system, protecting
1542	public safety, and facilitating successful reentry into the
1543	community. To assist in decreasing recidivism, the department's
1544	prevention services should strengthen protective factors, reduce
1545	risk factors, and use tested and effective approaches.
1546	(2) A primary focus of the department's prevention services
1547	is to develop capacity for local communities to serve their
1548	youth.
1549	(a) The department shall engage faith-based and community-
1550	based organizations to provide a full range of voluntary
1551	programs and services to prevent and reduce juvenile
1552	delinquency, including, but not limited to, chaplaincy services,
1553	crisis intervention counseling, mentoring, and tutoring.
1554	(b) The department shall establish volunteer coordinators
1555	in each circuit and encourage the recruitment of volunteers to
1556	serve as mentors for youth in department services.
1557	(c) The department shall promote the Invest In Children
1558	license plate developed pursuant to s. 320.08058(11) to help
1559	fund programs and services to prevent juvenile delinquency. The
1560	department shall allocate moneys for programs and services
1561	within each county based on that county's proportionate share of
1562	the license plate annual use fee collected by the county
1563	pursuant to s. 320.08058(11).
1564	(3) The department's prevention services for youth at risk
1565	of becoming delinquent should focus on preventing initial or
1566	further involvement in the juvenile justice system by including

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1567	services such as literacy services, gender-specific programming,
1568	and recreational and after-school services and should include
1569	targeted services to troubled, truant, ungovernable, abused,
1570	trafficked, or runaway youth. To decrease the likelihood that a
1571	youth will commit a delinquent act, the department may provide
1572	specialized services addressing the strengthening of families,
1573	job training, and substance abuse.
1574	(4) In an effort to decrease the prevalence of
1575	disproportionate minority representation in the juvenile justice
1576	system, the department's prevention services should address the
1577	multiple needs of minority youth at risk of becoming delinquent.
1578	(5) The department shall expend funds related to prevention
1579	services in a manner consistent with the policies expressed in
1580	ss. 984.02 and 985.01. The department shall expend such funds in
1581	a manner that maximizes accountability to the public and ensures
1582	the documentation of outcomes.
1583	(a) As a condition of the receipt of state funds, entities
1584	that receive or use state moneys to fund prevention services
1585	through contracts with the department or grants from any entity
1586	dispersed by the department shall:
1587	1. Design the programs providing such services to further
1588	one or more of the following strategies:
1589	a. Encouraging youth to attend and succeed in school, which
1590	may include special assistance and tutoring to address
1591	deficiencies in academic performance and collecting outcome data
1592	to reveal the number of days youth attended school while
1593	participating in the program.
1594	b. Engaging youth in productive and wholesome activities
1595	during nonschool hours which build positive character, instill

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1596	positive values, and enhance educational experiences.
1597	c. Encouraging youth to avoid the use of violence.
1598	d. Assisting youth in acquiring the skills needed to find
1599	meaningful employment, which may include assistance in finding a
1600	suitable employer for the youth.
1601	2. Provide the department with demographic information,
1602	dates of services, and the type of interventions received by
1603	each youth.
1604	(b) The department shall monitor output and outcome
1605	measures for each program strategy in paragraph (a) and include
1606	them in the annual Comprehensive Accountability Report published
1607	pursuant to s. 985.632.
1608	(c) The department shall monitor all programs that receive
1609	or use state moneys to fund juvenile delinquency prevention
1610	services through contracts or grants with the department for
1611	compliance with all provisions in the contracts or grants.
1612	Section 11. Section 985.24, Florida Statutes, is amended to
1613	read:
1614	985.24 Use of detention; prohibitions
1615	(1) All determinations and court orders regarding the use
1616	of secure, nonsecure, or home detention <u>care must</u> shall be based
1617	primarily upon findings that the child:
1618	(a) Presents a substantial risk of not appearing at a
1619	subsequent hearing;
1620	(b) Presents a substantial risk of inflicting bodily harm
1621	on others as evidenced by recent behavior, including the illegal
1622	possession of a firearm;
1623	(c) Presents a history of committing a property offense
1624	<u>before</u> prior to adjudication, disposition, or placement;
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1625	(d) Has committed contempt of court by:
1626	1. Intentionally disrupting the administration of the
1627	court;
1628	2. Intentionally disobeying a court order; or
1629	3. Engaging in a punishable act or speech in the court's
1630	presence which shows disrespect for the authority and dignity of
1631	the court; or
1632	(e) Requests protection from imminent bodily harm.
1633	(2) A child alleged to have committed a delinquent act or
1634	violation of law may not be placed into secure $\overline{\text{or}_{ au}}$ nonsecure, $\overline{\text{or}}$
1635	home detention care for any of the following reasons:
1636	(a) To allow a parent to avoid his or her legal
1637	responsibility.
1638	(b) To permit more convenient administrative access to the
1639	child.
1640	(c) To facilitate further interrogation or investigation.
1641	(d) Due to a lack of more appropriate facilities.
1642	(3) A child alleged to be dependent under chapter 39 may
1643	not, under any circumstances, be placed into secure detention
1644	care.
1645	(4) The department may develop nonsecure, nonresidential
1646	evening-reporting centers as an alternative to placing a child
1647	in secure detention to serve children and families while
1648	awaiting court hearings. Evening-reporting centers may be
1649	collocated with the juvenile assessment center. At a minimum,
1650	evening-reporting centers shall be operated during the afternoon
1651	and evening hours and provide a highly structured program of
1652	supervision. Evening-reporting centers may also provide academic
1653	tutoring, counseling, family engagement programs, and other
I	

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1654	activities.
1655	(5)(4) The department shall continue to identify
1656	alternatives to secure detention care and shall develop such
1657	alternatives and annually submit them to the Legislature for
1658	authorization and appropriation.
1659	Section 12. Paragraph (b) of subsection (2) and subsection
1660	(4) of section 985.245, Florida Statutes, are amended to read:
1661	985.245 Risk assessment instrument
1662	(2)
1663	(b) The risk assessment instrument, at a minimum, shall
1664	consider take into consideration, but need not be limited to,
1665	prior history of failure to appear, prior offenses, offenses
1666	committed pending adjudication, any unlawful possession of a
1667	firearm, theft of a motor vehicle or possession of a stolen
1668	motor vehicle, and probation status at the time the child is
1669	taken into custody. The risk assessment instrument shall also
1670	consider take into consideration appropriate aggravating and
1671	mitigating circumstances, and shall be designed to target a
1672	narrower population of children than s. 985.255 <u>, and</u> . The risk
1673	assessment instrument shall also include any information
1674	concerning the child's history of abuse and neglect. The risk
1675	assessment shall indicate whether detention care is warranted $_{m{ au}}$
1676	and, if detention care is warranted, whether the child should be
1677	placed into secure $\underline{\text{or}}_{ au}$ nonsecure, or home detention care.
1678	(4) If For a child who is under the supervision of the
1679	department through probation, home detention, nonsecure
1680	detention, conditional release, postcommitment probation, or

1680 detention, conditional release, postcommitment probation, or 1681 commitment and who is charged with committing a new offense, the 1682 risk assessment instrument may be completed and scored based on

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1683
      the underlying charge for which the child was placed under the
1684
      supervision of the department and the new offense.
1685
           Section 13. Subsection (1) of section 985.25, Florida
1686
      Statutes, is amended to read:
1687
           985.25 Detention intake.-
1688
            (1) The department juvenile probation officer shall receive
1689
      custody of a child who has been taken into custody from the law
1690
      enforcement agency or court and shall review the facts in the
1691
      law enforcement report or probable cause affidavit and make such
1692
      further inquiry as may be necessary to determine whether
1693
      detention care is appropriate required.
1694
            (a) During the period of time from the taking of the child
1695
      into custody to the date of the detention hearing, the initial
1696
      decision as to the child's placement into secure detention care
1697
      or, nonsecure detention care, or home detention care shall be
1698
      made by the department juvenile probation officer under ss.
1699
      985.24 and 985.245(1).
1700
            (b) The department juvenile probation officer shall base
1701
      its the decision as to whether or not to place the child into
1702
      secure detention care, home detention care, or nonsecure
1703
      detention care on an assessment of risk in accordance with the
1704
      risk assessment instrument and procedures developed by the
1705
      department under s. 985.245. However, a child charged with
1706
      possessing or discharging a firearm on school property in
1707
      violation of s. 790.115 shall be placed in secure detention
1708
      care. A child who has been taken into custody on three or more
1709
      separate occasions within a 60-day period shall be placed in
1710
      secure detention care until the child's detention hearing.
1711
            (c) If the child's final score on the risk assessment
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1712	instrument indicates that juvenile probation officer determines
1713	that a child who is eligible for detention care is appropriate,
1714	but the department otherwise determines he or she based upon the
1715	results of the risk assessment instrument should be released,
1716	the <u>department</u> juvenile probation officer shall contact the
1717	state attorney, who may authorize release.
1718	(d) If the child's final score on the risk assessment
1719	instrument indicates that detention is not appropriate
1720	authorized , the child may be released by the <u>department</u> juvenile
1721	probation officer in accordance with ss. 985.115 and 985.13.
1722	
1723	Under no circumstances shall The department, juvenile probation
1724	officer or the state attorney <u>,</u> or <u>a</u> law enforcement officer <u>may</u>
1725	not authorize the detention of any child in a jail or other
1726	facility intended or used for the detention of adults $_{ au}$ without
1727	an order of the court.
1728	Section 14. Section 985.255, Florida Statutes, is amended
1729	to read:
1730	985.255 Detention criteria; detention hearing
1731	(1) Subject to s. 985.25(1), a child taken into custody and
1732	placed into nonsecure or <u>secure</u> home detention care <u>shall be</u>
1733	given a hearing within 24 hours after being taken into custody.
1734	At the hearing, the court may order continued detention or
1735	detained in secure detention care prior to a detention hearing
1736	may continue to be detained by the court if:
1737	(a) The child is alleged to be an escapee from a
1738	residential commitment $program_{ au}$ or an absconder from a
1739	nonresidential commitment program, a probation program, or
1740	conditional release supervision ; or is alleged to have escaped
I	

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1741	while being lawfully transported to or from a residential
1742	commitment program.
1743	(b) The child is wanted in another jurisdiction for an
1744	offense <u>that</u> which , if committed by an adult, would be a felony.
1745	(c) The child is charged with a delinquent act or violation
1746	of law and requests in writing through legal counsel to be
1747	detained for protection from an imminent physical threat to his
1748	or her personal safety.
1749	(d) The child is charged with committing an offense of
1750	domestic violence as defined in s. 741.28 and is detained as
1751	provided in subsection (2).
1752	(e) The child is charged with possession or discharging a
1753	firearm on school property in violation of s. 790.115 <u>or the</u>
1754	illegal possession of a firearm.
1755	(f) The child is charged with a capital felony, a life
1756	felony, a felony of the first degree, a felony of the second
1757	degree <u>which</u> that does not involve a violation of chapter 893,
1758	or a felony of the third degree <u>which</u> that is also a crime of
1759	violence, including any such offense involving the use or
1760	possession of a firearm.
1761	(g) The child is charged with <u>a felony of the</u> any second
1762	degree or <u>a felony of the</u> third degree felony involving a
1763	violation of chapter 893 or <u>a felony of the</u> any third degree
1764	which felony that is not also a crime of violence, and the
1765	child:
1766	1. Has a record of failure to appear at court hearings
1767	after being properly notified in accordance with the Rules of
1768	Juvenile Procedure;
1769	2. Has a record of law violations <u>before</u> prior to court

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1770	hearings;
1771	3. Has already been detained or has been released and is
1772	awaiting final disposition of the case;
1773	4. Has a record of violent conduct resulting in physical
1774	injury to others; or
1775	5. Is found to have been in possession of a firearm.
1776	(h) The child is alleged to have violated the conditions of
1777	the child's probation or conditional release supervision.
1778	However, a child detained under this paragraph may be held only
1779	in a consequence unit as provided in s. 985.439. If a
1780	consequence unit is not available, the child shall be placed on
1781	nonsecure home detention with electronic monitoring.
1782	(i) The child is detained on a judicial order for failure
1783	to appear and has previously willfully failed to appear, after
1784	proper notice <u>:</u> ,
1785	1. For an adjudicatory hearing on the same case regardless
1786	of the results of the risk assessment instrument; or
1787	2. At two or more court hearings of any nature on the same
1788	case, regardless of the results of the risk assessment
1789	instrument.
1790	
1791	A child may be held in secure detention for up to 72 hours in
1792	advance of the next scheduled court hearing pursuant to this
1793	paragraph. The child's failure to keep the clerk of court and
1794	defense counsel informed of a current and valid mailing address
1795	where the child will receive notice to appear at court
1796	proceedings does not provide an adequate ground for excusal of
1797	the child's nonappearance at the hearings.
1798	(j) The child is detained on a judicial order for failure

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7-00541D-14 2014700 1799 to appear and has previously willfully failed to appear, after 1800 proper notice, at two or more court hearings of any nature on 1801 the same case regardless of the results of the risk assessment 1802 instrument. A child may be held in secure detention for up to 72 1803 hours in advance of the next scheduled court hearing pursuant to 1804 this paragraph. The child's failure to keep the clerk of court 1805 and defense counsel informed of a current and valid mailing 1806 address where the child will receive notice to appear at court 1807 proceedings does not provide an adequate ground for excusal of 1808 the child's nonappearance at the hearings. 1809 (2) A child who is charged with committing an offense of 1810 domestic violence as defined in s. 741.28 and whose risk 1811 assessment indicates secure detention is not appropriate who 1812 does not meet detention criteria may be held in secure detention 1813 if the court makes specific written findings that: 1814 (a) Respite care for the child is not available. 1815 (b) It is necessary to place the child in secure detention 1816 in order to protect the victim from injury. 1817 1818 The child may not be held in secure detention under this 1819 subsection for more than 48 hours unless ordered by the court. 1820 After 48 hours, the court shall hold a hearing if the state 1821 attorney or victim requests that secure detention be continued. 1822 The child may continue to be held in detention care if the court 1823 makes a specific, written finding that respite care is 1824 unavailable and it detention care is necessary to protect the 1825 victim from injury. However, the child may not be held in 1826 detention care beyond the time limits provided set forth in this section or s. 985.26. 1827

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1828
            (3) (a) A child who meets any of the criteria in subsection
      (1) and who is ordered to be detained under that subsection
1829
      shall be given a hearing within 24 hours after being taken into
1830
1831
      custody. The purpose of the detention hearing required under
1832
      subsection (1) is to determine the existence of probable cause
1833
      that the child has committed the delinquent act or violation of
1834
      law that he or she is charged with and the need for continued
1835
      detention. Unless a child is detained under paragraph (1)(d) or
1836
      paragraph (1)(e), the court shall use the results of the risk
1837
      assessment performed by the department juvenile probation
1838
      officer and, based on the criteria in subsection (1), shall
1839
      determine the need for continued detention. A child placed into
1840
      secure, nonsecure, or home detention care may continue to be so
1841
      detained by the court.
1842
            (b) If the court orders a placement more restrictive than
      indicated by the results of the risk assessment instrument, the
1843
1844
      court shall state, in writing, clear and convincing reasons for
1845
      such placement.
1846
            (c) Except as provided in s. 790.22(8) or in s. 985.27,
1847
      when a child is placed into secure or nonsecure detention care,
1848
      or into a respite home or other placement pursuant to a court
1849
      order following a hearing, the court order must include specific
      instructions that direct the release of the child from such
1850
1851
      placement by no later than 5 p.m. on the last day of the
      detention period specified in s. 985.26 or s. 985.27, whichever
1852
```

1853 is applicable, unless the requirements of such applicable 1854 provision have been met or an order of continuance has been 1855 granted under s. 985.26(4). <u>If the court order does not include</u> 1856 a date of release, the release date must be requested of the

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1	7-00541D-14 2014700
1857	court on the same date the youth was placed on detention care.
1858	If a subsequent hearing is needed to provide additional
1859	information to the court for safety planning, the initial order
1860	placing the youth on detention care must reflect the next
1861	detention review hearing, which should be held within 3 calendar
1862	days after the child's initial detention placement.
1863	Section 15. Subsections (1) through (3) of section 985.26,
1864	Florida Statutes, are amended to read:
1865	985.26 Length of detention
1866	(1) A child may not be placed into or held in secure ${ m or}_{m au}$
1867	nonsecure , or home detention care for <u>more</u> longer than 24 hours
1868	unless the court orders such detention care, and the order
1869	includes specific instructions that direct the release of the
1870	child from such detention care $_{ au}$ in accordance with s. 985.255.
1871	The order shall be a final order, reviewable by appeal under s.
1872	985.534 and the Florida Rules of Appellate Procedure. Appeals of
1873	such orders shall take precedence over other appeals and other
1874	pending matters.
1875	(2) A child may not be held in secure $\overline{\mathrm{or}_{ au}}$ nonsecure, $\overline{\mathrm{or}}$
1876	home detention care under a special detention order for more
1877	than 21 days unless an adjudicatory hearing for the case has
1878	been commenced in good faith by the court. However, upon good
1879	cause being shown that the nature of the charge requires
1880	additional time for the prosecution or defense of the case, the
1881	court may extend the length of detention for an additional 9
1882	days if the child is charged with an offense that would be, if
1883	committed by an adult, a capital felony, a life felony, a felony
1884	of the first degree, or a felony of the second degree involving
1885	violence against any individual.

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7-00541D-14 2014700 1886 (3) Except as provided in subsection (2), a child may not 1887 be held in secure or, nonsecure, or home detention care for more 1888 than 15 days following the entry of an order of adjudication. 1889 Section 16. Section 985.265, Florida Statutes, is amended 1890 to read: 1891 985.265 Detention transfer and release; education; adult 1892 jails.-1893 (1) If a child is detained under this part, the department may transfer the child from nonsecure or home detention care to 1894 1895 secure detention care only if significantly changed 1896 circumstances warrant such transfer. 1897 (2) If a child is on release status and not detained under 1898 this part, the child may be placed into secure or τ nonsecure τ or 1899 home detention care only pursuant to a court hearing in which 1900 the original risk assessment instrument and the, rescored based 1901 on newly discovered evidence or changed circumstances are 1902 introduced into evidence with a rescored risk assessment 1903 instrument with the results recommending detention, is 1904 introduced into evidence. 1905 (3) (a) If When a juvenile sexual offender is placed in 1906 detention, detention staff shall provide appropriate monitoring 1907 and supervision to ensure the safety of other children in the 1908 facility. (b) If When a juvenile charged with murder under s. 782.04, 1909 1910 sexual battery under chapter 794, stalking under s. 784.048, or 1911 domestic violence as defined in s. 741.28, or an attempt to 1912 commit any of these offenses sexual offender, under this 1913 subsection, is released from secure detention or transferred to 1914 home detention or nonsecure detention, detention staff shall

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1915 immediately notify the appropriate law enforcement agency, and 1916 school personnel, and the victim. 1917 (4) (a) While a child who is currently enrolled in school is 1918 in nonsecure or home detention care, the child shall continue to 1919 attend school unless otherwise ordered by the court. 1920 (b) While a child is in secure detention care, the child 1921 shall receive education commensurate with his or her grade level 1922 and educational ability. 1923 (5) The court shall order the delivery of a child to a jail 1924 or other facility intended or used for the detention of adults: 1925 (a) If When the child has been transferred or indicted for 1926 criminal prosecution as an adult under part X., except that The 1927 court may not order or allow a child alleged to have committed a 1928 misdemeanor who is being transferred for criminal prosecution pursuant to either s. 985.556 or s. 985.557 to be detained or 1929 1930 held in a jail or other facility intended or used for the 1931 detention of adults; however, such child may be held temporarily 1932 in a detention facility; or 1933 (b) If When a child taken into custody in this state is 1934 wanted by another jurisdiction for prosecution as an adult. 1935 1936 A The child shall be housed separately from adult inmates to 1937 prohibit the a child from having regular contact with 1938 incarcerated adults, including trustees. As used in this 1939 subsection, the term "regular contact" means sight and sound 1940 contact. Separation of children from adults may not allow shall 1941 permit no more than haphazard or accidental contact. The 1942 receiving jail or other facility shall provide contain a 1943 separate section for children and shall have an adequate staff

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1944	adequate to supervise and monitor the child's activities at all
1945	times. Supervision and monitoring of children includes physical
1946	observation and documented checks by jail or receiving facility
1947	supervisory personnel at intervals not to exceed $\underline{10}$ $\underline{15}$ minutes.
1948	This subsection does not prohibit placing two or more children
1949	in the same cell. Under no circumstances shall A child <u>may not</u>
1950	be placed in <u>a</u> the same cell with an adult.
1951	Section 17. Section 985.27, Florida Statutes, is amended to
1952	read:
1953	985.27 Postadjudication Postcommitment detention while
1954	awaiting commitment placement
1955	(1) The court must place all children who are adjudicated
1956	and awaiting placement in a commitment program in detention
1957	care. Children who are in home detention care or nonsecure
1958	detention care may be placed on electronic monitoring.
1959	(a) A child who is awaiting placement in a low-risk
1960	residential program must be removed from detention within 5
1961	days, excluding Saturdays, Sundays, and legal holidays. Any
1962	child held in secure detention during the 5 days must meet
1963	detention admission criteria under this part. A child who is
1964	placed in home detention care, nonsecure detention care, or home
1965	or nonsecure detention care with electronic monitoring, while
1966	awaiting placement in a minimum-risk or low-risk program, may be
1967	held in secure detention care for 5 days, if the child violates
1968	the conditions of the home detention care, the nonsecure
1969	detention care, or the electronic monitoring agreement. For any
1970	subsequent violation, the court may impose an additional 5 days
1971	in secure detention care.
1972	(b) A child who is awaiting placement in a <u>nonsecure</u>
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7-00541D-14 2014700 1973 moderate-risk residential program must be removed from detention 1974 within 5 days, excluding Saturdays, Sundays, and legal holidays. 1975 A Any child held in secure detention during the 5 days must meet 1976 detention admission criteria under this part. The department may 1977 seek an order from the court authorizing continued detention for 1978 a specific period of time necessary for the appropriate 1979 residential placement of the child. However, such continued 1980 detention in secure detention care may not exceed 15 days after 1981 entry of the commitment order, excluding Saturdays, Sundays, and 1982 legal holidays, and except as otherwise provided in this 1983 section. A child who is placed in home detention care, nonsecure 1984 detention care, or home or nonsecure detention care with 1985 electronic monitoring τ while awaiting placement in a nonsecure 1986 residential moderate-risk program, may be held in secure 1987 detention care for 5 days $_{\tau}$ if the child violates the conditions 1988 of the home detention care, the nonsecure detention care, or the 1989 electronic monitoring agreement. For any subsequent violation, 1990 the court may impose an additional 5 days in secure detention 1991 care. 1992 (b) (c) If the child is committed to a high-risk residential

1992 (b) (c) If the child is committed to a high-risk residential 1993 program, the child must be held in <u>secure</u> detention care until 1994 placement or commitment is accomplished.

1995 <u>(c) (d)</u> If the child is committed to a maximum-risk 1996 residential program, the child must be held in <u>secure</u> detention 1997 care until placement or commitment is accomplished.

1998 (2) Regardless of detention status, a child being
1999 transported by the department to a residential commitment
2000 facility of the department may be placed in secure detention <u>for</u>
2001 <u>up to 24 hours</u> overnight, not to exceed a 24-hour period, for

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2002	the specific purpose of ensuring the safe delivery of the child
2003	to his or her residential commitment program, court,
2004	appointment, transfer, or release.
2005	Section 18. Subsection (1) of section 985.275, Florida
2006	Statutes, is amended to read:
2007	985.275 Detention of escapee or absconder on authority of
2008	the department
2009	(1) If an authorized agent of the department has reasonable
2010	grounds to believe that \underline{a} any delinquent child committed to the
2011	department has escaped from a residential commitment facility or
2012	in the course of lawful transportation to or from such facility
2013	from being lawfully transported thereto or therefrom, or has
2014	absconded from a nonresidential commitment facility, the agent
2015	shall notify law enforcement and, if the offense qualifies under
2016	chapter 960, notify the victim, and make every reasonable effort
2017	to locate the delinquent child. The child may be returned take
2018	the child into active custody and may deliver the child to the
2019	facility or, if it is closer, to a detention center for return
2020	to the facility. However, a child may not be held in detention
2021	more longer than 24 hours, excluding Saturdays, Sundays, and
2022	legal holidays, unless a special order so directing is made by
2023	the judge after a detention hearing resulting in a finding that
2024	detention is required based on the criteria in s. 985.255. The
2025	order must shall state the reasons for such finding. The reasons
2026	are shall be reviewable by appeal or in habeas corpus
2027	proceedings in the district court of appeal.
2028	Section 19. Paragraph (b) of subsection (4), paragraph (h)
2029	of subsection (6), and paragraph (a) of subsection (7) of

2030 section 985.433, Florida Statutes, are amended to read:

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                                                                2014700
2031
            985.433 Disposition hearings in delinguency cases.-When a
2032
      child has been found to have committed a delinquent act, the
2033
      following procedures shall be applicable to the disposition of
2034
      the case:
2035
            (4) Before the court determines and announces the
2036
      disposition to be imposed, it shall:
2037
            (b) Discuss with the child his or her compliance with any
2038
      predisposition home release plan or other plan imposed since the
2039
      date of the offense.
2040
            (6) The first determination to be made by the court is a
2041
      determination of the suitability or nonsuitability for
2042
      adjudication and commitment of the child to the department. This
2043
      determination shall include consideration of the recommendations
2044
      of the department, which may include a predisposition report.
2045
      The predisposition report shall include, whether as part of the
2046
      child's multidisciplinary assessment, classification, and
2047
      placement process components or separately, evaluation of the
2048
      following criteria:
2049
            (h) The child's educational status, including, but not
2050
      limited to, the child's strengths, abilities, and unmet and
2051
      special educational needs. The report must shall identify
2052
      appropriate educational and career <del>vocational</del> goals for the
2053
      child. Examples of appropriate goals include:
2054
            1. Attainment of a high school diploma or its equivalent.
            2. Successful completion of literacy course(s).
2055
2056
            3. Successful completion of career and technical
2057
      educational vocational course(s).
2058
            4. Successful attendance and completion of the child's
2059
      current grade, or recovery of credits of classes the child
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previously failed, if enrolled in school.
5. Enrollment in an apprenticeship or a similar program.
It is the intent of the Legislature that the criteria set forth
in this subsection are general guidelines to be followed at the
discretion of the court and not mandatory requirements of
procedure. It is not the intent of the Legislature to provide
for the appeal of the disposition made under this section.
(7) If the court determines that the child should be
adjudicated as having committed a delinquent act and should be
committed to the department, such determination shall be in
writing or on the record of the hearing. The determination shall
include a specific finding of the reasons for the decision to
adjudicate and to commit the child to the department, including
any determination that the child was a member of a criminal
gang.
(a) The <u>department</u> juvenile probation officer shall
recommend to the court the most appropriate placement and
treatment plan, specifically identifying the restrictiveness
level most appropriate for the child <u>if commitment is</u>
recommended. If the court has determined that the child was a
member of a criminal gang, that determination shall be given
great weight in identifying the most appropriate restrictiveness
level for the child. The court shall consider the department's
recommendation in making its commitment decision.

2085 Section 20. Present subsections (4) through (6) of section 2086 985.435, Florida Statutes, are redesignated as subsections (5) 2087 through (7), respectively, a new subsection (4) is added to that 2088 section, and subsection (3) and present subsection (4) of that

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2089
      section are amended, to read:
2090
           985.435 Probation and postcommitment probation; community
2091
      service.-
2092
            (3) A probation program must also include a rehabilitative
2093
      program component such as a requirement of participation in
2094
      substance abuse treatment or in a school or career and technical
2095
      other educational program. The nonconsent of the child to
2096
      treatment in a substance abuse treatment program does not
2097
      preclude in no way precludes the court from ordering such
2098
      treatment. Upon the recommendation of the department at the time
2099
      of disposition, or subsequent to disposition pursuant to the
2100
      filing of a petition alleging a violation of the child's
2101
      conditions of postcommitment probation, the court may order the
2102
      child to submit to random testing for the purpose of detecting
2103
      and monitoring the use of alcohol or controlled substances.
2104
           (4) A probation program may also include an alternative
2105
      consequence component to address instances in which a child is
2106
      noncompliant with technical conditions of his or her probation,
2107
      but has not committed any new violations of law. The alternative
2108
      consequence component shall be designed to provide swift and
2109
      appropriate consequences to any noncompliance with technical
2110
      conditions of probation. If the probation program includes this
2111
      component, specific consequences that apply to noncompliance
2112
      with specific technical conditions of probation must be detailed
2113
      in the disposition order.
2114
           (5) (4) An evaluation of the youth's risk to reoffend A
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2114 <u>(5)</u> An evaluation of the youth's fisk to redfield A 2115 classification scale for levels of supervision shall be provided 2116 by the department, taking into account the child's needs and 2117 risks relative to probation supervision requirements to

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1	7-00541D-14 2014700
2118	reasonably ensure the public safety. Probation programs for
2119	children shall be supervised by the department or by any other
2120	person or agency specifically authorized by the court. These
2121	programs must include, but are not limited to, structured or
2122	restricted activities as described in this section and s.
2123	985.439, and shall be designed to encourage the child toward
2124	acceptable and functional social behavior.
2125	Section 21. Paragraph (a) of subsection (1) and subsection
2126	(4) of section 985.439, Florida Statutes, are amended to read:
2127	985.439 Violation of probation or postcommitment
2128	probation
2129	(1)(a) This section is applicable when the court has
2130	jurisdiction over a child on probation or postcommitment
2131	probation, regardless of adjudication an adjudicated delinquent
2132	child.
2133	(4) Upon the child's admission, or if the court finds after
2134	a hearing that the child has violated the conditions of
2135	probation or postcommitment probation, the court shall enter an
2136	order revoking, modifying, or continuing probation or
2137	postcommitment probation. In each such case, the court shall
2138	enter a new disposition order and, in addition to the sanctions
2139	set forth in this section, may impose any sanction the court
2140	could have imposed at the original disposition hearing. If the
2141	child is found to have violated the conditions of probation or
2142	postcommitment probation, the court may:
2143	(a) Place the child in a consequence unit in that judicial
2144	circuit, if available, for up to 5 days for a first violation
2145	and up to 15 days for a second or subsequent violation.
0146	

2146

(b) Place the child on <u>nonsecure</u> home detention with

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2147	electronic monitoring. However, this sanction may be used only
2148	if a residential consequence unit is not available.
2149	(c) Modify or continue the child's probation program or
2150	postcommitment probation program.
2151	(d) Revoke probation or postcommitment probation and commit
2152	the child to the department.
2153	(e) If the violation of probation is technical in nature
2154	and not a new violation of law, place the child in an
2155	alternative consequence program designed to provide swift and
2156	appropriate consequences for any further violations of
2157	probation.
2158	1. Alternative consequence programs shall be established at
2159	the local level in coordination with law enforcement agencies,
2160	the chief judge of the circuit, the state attorney, and the
2161	public defender.
2162	2. Alternative consequence programs may be operated by an
2163	entity such as a law enforcement agency, the department, a
2164	juvenile assessment center, a county or municipality, or another
2165	entity selected by the department.
2166	3. Upon placing a child in an alternative consequence
2167	program, the court must approve specific consequences for
2168	specific violations of the conditions of probation.
2169	Section 22. Subsection (2) of section 985.441, Florida
2170	Statutes, is amended to read:
2171	985.441 Commitment
2172	(2) Notwithstanding subsection (1), the court having
2173	jurisdiction over an adjudicated delinquent child whose
2174	underlying offense <u>is</u> was a misdemeanor, or a child who is
2175	currently on probation for a misdemeanor, may not commit the
•	

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2176	child for any misdemeanor offense or any probation violation
2177	that is technical in nature and not a new violation of law at a
2178	restrictiveness level other than minimum-risk nonresidential
2179	unless the probation violation is a new violation of law
2180	constituting a felony. However, the court may commit such child
2181	to a <u>nonsecure</u> low-risk or moderate-risk residential placement
2182	if:
2183	(a) The child has previously been adjudicated <u>or had</u>
2184	adjudication withheld for a felony offense;
2185	(b) The child has previously been adjudicated or had
2186	adjudication withheld for three or more misdemeanor offenses
2187	within the preceding 18 months;
2188	(c) The child is before the court for disposition for a
2189	violation of s. 800.03, s. 806.031, or s. 828.12; or
2190	(d) The court finds by a preponderance of the evidence that
2191	the protection of the public requires such placement or that the
2192	particular needs of the child would be best served by such
2193	placement. Such finding must be in writing.
2194	Section 23. Paragraph (a) of subsection (1) and subsection
2195	(5) of section 985.46, Florida Statutes, are amended to read:
2196	985.46 Conditional release
2197	(1) The Legislature finds that:
2198	(a) Conditional release is the care, treatment, help,
2199	provision of transition-to-adulthood services, and supervision
2200	provided to juveniles released from residential commitment
2201	programs to promote rehabilitation and prevent recidivism.
2202	(5) Participation in the educational program by students of
2203	compulsory school attendance age pursuant to s. 1003.21(1) and
2204	(2)(a) is mandatory for juvenile justice youth on conditional

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1	7-00541D-14 2014700
2205	release or postcommitment probation status. A student of
2206	noncompulsory school-attendance age who has not received a high
2207	school diploma or its equivalent must participate in <u>an</u> the
2208	educational or career and technical educational program. A youth
2209	who has received a high school diploma or its equivalent and is
2210	not employed must participate in workforce development or other
2211	career or technical education or attend a community college or a
2212	university while in the program, subject to available funding.
2213	Section 24. Subsections (1) through (5) of section 985.461,
2214	Florida Statutes, are amended to read:
2215	985.461 Transition to adulthood
2216	(1) The Legislature finds that older youth are faced with
2217	the need to learn how to support themselves within legal means
2218	and overcome the stigma of being delinquent. In most cases,
2219	parents expedite this transition. It is the intent of the
2220	Legislature that the department provide older youth in its
2221	custody or under its supervision with opportunities for
2222	participating in transition-to-adulthood services while in the
2223	department's commitment programs or in probation or conditional
2224	release programs in the community. These services should be
2225	reasonable and appropriate for the youths' respective ages or
2226	special needs and provide activities that build life skills and
2227	increase the ability to live independently and become self-
2228	sufficient.
2229	(2) Youth served by the department who are in the custody

2229 (2) Youth served by the department who are in the custody 2230 of the Department of Children and <u>Families</u> Family Services and 2231 who entered juvenile justice placement from a foster care 2232 placement, if otherwise eligible, may receive independent living 2233 transition services pursuant to s. 409.1451. Court-ordered

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7-00541D-14 2014700 2234 commitment or probation with the department is not a barrier to 2235 eligibility for the array of services available to a youth who 2236 is in the dependency foster care system only. 2237 (3) For a dependent child in the foster care system, 2238 adjudication for delinquency does not, by itself, disqualify 2239 such child for eligibility in the Department of Children and 2240 Families' Family Services' independent living program. 2241 (4) As part of the child's treatment plan, the department 2242 may provide transition-to-adulthood services to children 2243 released from residential commitment. To support participation 2244 in transition-to-adulthood services and subject to 2245 appropriation, the department may: (a) Assess the child's skills and abilities to live 2246 2247 independently and become self-sufficient. The specific services 2248 to be provided shall be determined using an assessment of his or 2249 her readiness for adult life. 2250 (b) Use community reentry teams to assist in the 2251 development of Develop a list of age-appropriate activities and 2252 responsibilities to be incorporated in the child's written case 2253 plan for any youth 17 years of age or older who is under the 2254 custody or supervision of the department. Community reentry teams may include representation from school districts, law 2255 2256 enforcement, workforce development services, community-based 2257 service providers, and the youth's family. Activities may 2258 include, but are not limited to, life skills training, including 2259 training to develop banking and budgeting skills, interviewing 2260 and career planning skills, parenting skills, personal health 2261 management, and time management or organizational skills; 2262 educational support; employment training; and counseling.

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2264 insurance benefits and public assistance. 2265 (d) Request parental or guardian permission for the youth 2266 to participate in transition-to-adulthood services. Upon such 2267 consent, age-appropriate activities shall be incorporated into 2268 the youth's written case plan. This plan may include specific 2269 goals and objectives and shall be reviewed and updated at least 2270 quarterly. If the parent or quardian is cooperative, the plan 2271 may not interfere with the parent's or guardian's rights to 2272 nurture and train his or her child in ways that are otherwise in 2273 compliance with the law and court order. 2274 (e) Contract for transition-to-adulthood services that 2275 include residential services and assistance and allow the child 2276 to live independently of the daily care and supervision of an 2277 adult in a setting that is not licensed under s. 409.175. A 2278 child under the care or supervision of the department who has 2279 reached 17 years of age but is not yet 19 years of age is eligible for such services if he or she does not pose a danger 2280 2281 to the public and is able to demonstrate minimally sufficient 2282 skills and aptitude for living under decreased adult 2283 supervision, as determined by the department, using established procedures and assessments. 2284 2285 (f) Assist the youth in building a portfolio of educational 2286 and vocational accomplishments, necessary identification, 2287 resumes, and cover letters in an effort to enhance the youth's 2288 employability.

(c) Provide information related to social security

2289 (g) Collaborate with school district contacts to facilitate 2290 appropriate educational services based on the youth's identified 2291 needs.

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2292	
2293	department's care or supervision, and without benefit of parents
2294	or legal guardians capable of assisting the child in the
2295	transition to adult life, the department may provide an
2296	assessment to determine the child's skills and abilities to live
2297	independently and become self-sufficient. Based on the
2298	assessment and within existing resources, services and training
2299	may be provided in order to develop the necessary skills and
2300	abilities before the child's 18th birthday .
2301	Section 25. Paragraph (b) of subsection (3) of section
2302	985.481, Florida Statutes, is amended to read:
2303	985.481 Sexual offenders adjudicated delinquent;
2304	notification upon release
2305	(3)
2306	(b) No later than November 1, 2007, The department <u>shall</u>
2307	must make the information described in subparagraph (a)1.
2308	available electronically to the Department of Law Enforcement in
2309	its database and in a format that is compatible with the
2310	requirements of the Florida Crime Information Center.
2311	Section 26. Subsection (5) of section 985.4815, Florida
2312	Statutes, is amended to read:
2313	985.4815 Notification to Department of Law Enforcement of
2314	information on juvenile sexual offenders
2315	(5) In addition to notification and transmittal
2316	requirements imposed by any other provision of law, the
2317	department shall compile information on any sexual offender and
2318	provide the information to the Department of Law Enforcement. $ m No$
2319	later than November 1, 2007, The department shall must make the
2320	information available electronically to the Department of Law

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2321	Enforcement in its database in a format that is compatible with
2322	the requirements of the Florida Crime Information Center.
2323	Section 27. Paragraph (a) of subsection (3) and paragraph
2324	(a) of subsection (9) of section 985.601, Florida Statutes, are
2325	amended to read:
2326	985.601 Administering the juvenile justice continuum
2327	(3)(a) The department shall develop or contract for
2328	diversified and innovative programs to provide rehabilitative
2329	treatment, including early intervention and prevention,
2330	diversion, comprehensive intake, case management, diagnostic and
2331	classification assessments, trauma-informed care, individual and
2332	family counseling, family engagement resources and programs,
2333	gender-specific programming, shelter care, diversified detention
2334	care emphasizing alternatives to secure detention, diversified
2335	probation, halfway houses, foster homes, community-based
2336	substance abuse treatment services, community-based mental
2337	health treatment services, community-based residential and
2338	nonresidential programs, mother-infant programs, and
2339	environmental programs. The department may pay expenses in
2340	support of innovative programs and activities that address the
2341	identified needs and well-being of children in the department's
2342	care or under its supervision. Each program shall place
2343	particular emphasis on reintegration and conditional release for
2344	all children in the program.
2345	(9)(a) The department shall operate a statewide, regionally
0040	

administered system of detention services for children, in accordance with a comprehensive plan for the regional administration of all detention services in the state. The plan must provide for the maintenance of adequate availability of

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detention services for all counties. The plan must cover all the
department's operating circuits, with each operating circuit
having <u>access to</u> a secure facility and nonsecure and home
detention programs., and The plan may be altered or modified by
the department of Juvenile Justice as necessary.
Section 28. Section 985.605, Florida Statutes, is repealed.
Section 29. Section 985.606, Florida Statutes, is repealed.
Section 30. Section 985.61, Florida Statutes, is repealed.
Section 31. Section 985.632, Florida Statutes, is reordered
and amended to read:
985.632 Quality improvement assurance and cost-
effectiveness
(2) (1) PERFORMANCE ACCOUNTABILITYIt is the intent of the
Legislature that the department establish a performance
accountability system for each provider who contracts with the
department for the delivery of services to children. The
contract must include both output measures, such as the number
of children served, and outcome measures, such as program
completion and postcompletion recidivism. Each contractor shall
report performance results to the department annually. The
department's Bureau of Research and Planning shall summarize
performance results from all contracts and report the
information annually to the President of the Senate and the
Speaker of the House of Representatives in the Comprehensive
Accountability Report. The report must:
(a) Ensure that information be provided to decisionmakers
in a timely manner so that resources are allocated to programs
that of the department which achieve desired performance levels.
(b) Provide information about the cost of such programs and

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2379	their differential effectiveness so that the quality of such
2380	programs can be compared and improvements made continually.
2381	(c) Provide information to aid in developing related policy
2382	issues and concerns.
2383	(d) Provide information to the public about the
2384	effectiveness of such programs in meeting established goals and
2385	objectives.
2386	(e) Provide a basis for a system of accountability so that
2387	each <u>child</u> client is afforded the best programs to meet his or
2388	her needs.
2389	(f) Improve service delivery to <u>children through the use of</u>
2390	technical assistance clients .
2391	(g) Modify or eliminate activities <u>or programs</u> that are not
2392	effective.
2393	(h) Collect and analyze available statistical data for the
2394	purpose of ongoing evaluation of all programs.
2395	(1) (2) DEFINITIONS.—As used in this section, the term:
2396	(a) "Program" means any facility, service, or program for
2397	children which is operated by the department or by a provider
2398	under contract with the department.
2399	(a) "Client" means any person who is being provided
2400	treatment or services by the department or by a provider under
2401	contract with the department.
2402	(b) "Program component" means an aggregation of generally
2403	related objectives which, because of their special character,
2404	related workload, and interrelated output, can logically be
2405	considered an entity for purposes of organization, management,
2406	accounting, reporting, and budgeting.
2407	(c) "Program group" means a collection of programs with

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2408	sufficient similarity of functions, services, and children to
2409	permit appropriate comparison among programs within the group.
2410	(c) "Program effectiveness" means the ability of the
2411	program to achieve desired client outcomes, goals, and
2412	objectives.
2413	(3) COMPREHENSIVE ACCOUNTABILITY REPORTThe department, in
2414	consultation with the Office of Economic and Demographic
2415	Research, the Office of Program Policy Analysis and Government
2416	Accountability, and contract service providers, shall develop
2417	and use a standard methodology for annually measuring,
2418	evaluating, and reporting program outputs and child outcomes for
2419	each program and program group. The standard methodology must:
2420	(a) Include common terminology and operational definitions
2421	for measuring the performance of system and program
2422	administration, program outputs, and program outcomes.
2423	(b) Specify program outputs for each program and for each
2424	program group within the juvenile justice continuum.
2425	(c) Specify desired child outcomes and methods by which
2426	child outcomes may be measured for each program and program
2427	group.
2428	(3) The department shall annually collect and report cost
2429	data for every program operated or contracted by the department.
2430	The cost data shall conform to a format approved by the
2431	department and the Legislature. Uniform cost data shall be
2432	reported and collected for state-operated and contracted
2433	programs so that comparisons can be made among programs. The
2434	department shall ensure that there is accurate cost accounting
2435	for state-operated services including market-equivalent rent and
2436	other shared cost. The cost of the educational program provided

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7-00541D-14 2014700 2437 to a residential facility shall be reported and included in the 2438 cost of a program. The department shall submit an annual cost 2439 report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the 2440 2441 Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later 2442 2443 than December 1 of each year. Cost-benefit analysis for 2444 educational programs will be developed and implemented in 2445 collaboration with and in cooperation with the Department of 2446 Education, local providers, and local school districts. Cost 2447 data for the report shall include data collected by the 2448 Department of Education for the purposes of preparing the annual 2449 report required by s. 1003.52(19). 2450 (4) (a) COST-EFFECTIVENESS MODEL.-The department, in 2451 consultation with the Office of Economic and Demographic 2452 Research and contract service providers, shall develop a cost-2453 effectiveness model and apply the model to each commitment 2454 program. Program recidivism rates shall be a component of the 2455 model. 2456 (a) The cost-effectiveness model must shall compare program 2457 costs to expected and actual child recidivism rates client 2458 outcomes and program outputs. It is the intent of the 2459 Legislature that continual development efforts take place to 2460 improve the validity and reliability of the cost-effectiveness 2461 model. 2462 (b) The department shall rank commitment programs based on

2463 the cost-effectiveness model, performance measures, and 2464 <u>adherence to quality improvement standards</u> and shall submit a 2465 report <u>this data in the annual Comprehensive Accountability</u>

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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 failed to achieve a minimum <u>standard</u> 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.

2477 (d) In collaboration with the Office of Economic and 2478 Demographic Research_{τ} and contract service providers, the 2479 department shall develop a work plan to refine the cost-2480 effectiveness model so that the model is consistent with the 2481 performance-based program budgeting measures approved by the 2482 Legislature to the extent the department deems appropriate. The 2483 department shall notify the Office of Program Policy Analysis 2484 and Government Accountability of any meetings to refine the 2485 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 <u>improvement</u> assurance report required by this section, the cost-effectiveness report required in this subsection, and other reports available to the department.

2493 2. Target, for a more comprehensive evaluation, any 2494 commitment program that has achieved consistently high, low, or

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2495	disparate ratings in the reports required under subparagraph 1.
2496	and target, for technical assistance, any commitment program
2497	that has achieved low or disparate ratings in the reports
2498	required under subparagraph 1.
2499	3. Identify the essential factors that contribute to the
2500	high, low, or disparate program ratings.
2501	4. Use the results of these evaluations in developing or
2502	refining juvenile justice programs or program models, <u>child</u>
2503	client outcomes and program outputs, provider contracts, quality
2504	improvement assurance standards, and the cost-effectiveness
2505	model.
2506	(5) <u>QUALITY IMPROVEMENT; MINIMUM STANDARDS.</u> The department
2507	shall:
2508	(a) Establish a comprehensive quality <u>improvement</u> assurance
2509	system for each program operated by the department or operated
2510	by a provider under contract with the department. Each contract
2511	entered into by the department must provide for quality
2512	improvement assurance.
2513	(b) Provide operational definitions of and criteria for
2514	quality improvement assurance for each specific program
2515	component.
2516	(c) Establish quality <u>improvement</u> assurance goals and
2517	objectives for each specific program component.
2518	(d) Establish the information and specific data elements
2519	required for the quality <i>improvement</i> assurance program.
2520	(e) Develop a quality <u>improvement</u> assurance manual of
2521	specific, standardized terminology and procedures to be followed
2522	by each program.
2523	(f) Evaluate each program operated by the department or a
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2524	provider under a contract with the department <u>annually</u> and
2525	establish minimum <u>standards</u> thresholds for each program
2526	component. If a provider fails to meet the established minimum
2527	standards thresholds, such failure shall cause the department
2528	\underline{shall} \underline{to} cancel the provider's contract unless the provider
2529	<u>complies</u> achieves compliance with minimum standards thresholds
2530	within 6 months or unless there are documented extenuating
2531	circumstances. In addition, the department may not contract with
2532	the same provider for the canceled service for a period of 12
2533	months. If a department-operated program fails to meet the
2534	established minimum <u>standards</u> thresholds , the department must
2535	take necessary and sufficient steps to ensure $\underline{\prime}$ and document
2536	program changes to achieve <u>,</u> compliance with the established
2537	minimum <u>standards</u> thresholds . If the department-operated program
2538	fails to achieve compliance with the established minimum
2539	<u>standards</u> thresholds within 6 months and if there are no
2540	documented extenuating circumstances, the department \underline{shall} \underline{must}
2541	notify the Executive Office of the Governor and the Legislature
2542	of the corrective action taken. Appropriate corrective action
2543	may include, but is not limited to:
2544	1. Contracting out for the services provided in the
2545	program;
2546	2. Initiating appropriate disciplinary action against all
2547	employees whose conduct or performance is deemed to have
2548	materially contributed to the program's failure to meet
2549	established minimum thresholds;
2550	3. Redesigning the program; or

4. Realigning the program.

2551

2552

(6) COMPREHENSIVE ACCOUNTABILITY REPORT; SUBMITTAL.-No

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7-00541D-14 2014700 2553 later than February 1 of each year, the department shall submit 2554 the Comprehensive Accountability an annual Report to the 2555 Governor, the President of the Senate, the Speaker of the House 2556 of Representatives, the Minority Leader of each house of the 2557 Legislature, and the appropriate substantive and fiscal 2558 committees of each house of the Legislature, and the Governor, 2559 no later than February 1 of each year. The Comprehensive 2560 Accountability annual Report must contain, at a minimum, for 2561 each specific program component: a comprehensive description of 2562 the population served by the program; a specific description of 2563 the services provided by the program; cost; a comparison of 2564 expenditures to federal and state funding; immediate and long-2565 range concerns; and recommendations to maintain, expand, 2566 improve, modify, or eliminate each program component so that 2567 changes in services lead to enhancement in program quality. The 2568 department shall ensure the reliability and validity of the 2569 information contained in the report. 2570 (7) (6) ONGOING EVALUATION. - The department shall collect and 2571

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.

2577 Section 32. Paragraph (a) of subsection (1) and paragraph 2578 (b) of subsection (3) of section 985.644, Florida Statutes, are 2579 amended to read:

2580 985.644 Departmental contracting powers; personnel 2581 standards and screening.-

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2582	(1) The department may contract with the Federal
2583	Government, other state departments and agencies, county and
2584	municipal governments and agencies, public and private agencies,
2585	and private individuals and corporations in carrying out the
2586	purposes of, and the responsibilities established in, this
2587	chapter.
2588	(a) Each contract entered into by the department for
2589	services delivered on an appointment or intermittent basis by a
2590	provider that does not have regular custodial responsibility for
2591	children <u>,</u> and each contract with a school for before or
2592	aftercare services, must ensure that all owners, operators, and
2593	personnel who have direct contact with children are subject to
2594	level 2 background screening pursuant to chapter 435.
2595	(3)
2596	(b) <u>Certified</u> Except for law enforcement, correctional, and
2597	correctional probation officers, pursuant to s. 943.13, are not
2598	required to submit to level 2 screenings while employed by a law
2599	enforcement agency or correctional facility. to whom s.
2600	943.13(5) applies, The department shall electronically submit to
2601	the Department of Law Enforcement:
2602	1. Fingerprint information obtained during the employment
2603	screening required by subparagraph (a)1.
2604	2. Fingerprint information for all persons employed by the
2605	department, or by a provider under contract with the department,
2606	in delinquency facilities, services, or programs if such
2607	fingerprint information has not previously been <u>previously</u>
2608	electronically submitted pursuant to this section to the
2609	Department of Law Enforcement under this paragraph.

2610

Section 33. Section 985.6441, Florida Statutes, is created

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1	7-00541D-14 2014700
2611	to read:
2612	985.6441 Health care services
2613	(1) As used in this section, the term:
2614	(a) "Hospital" means a hospital licensed under chapter 395.
2615	(b) "Health care provider" has the same meaning as provided
2616	<u>in s. 766.105.</u>
2617	(2) The following reimbursement limitations apply to the
2618	compensation of health care providers by the department:
2619	(a) If there is no contract between the department and a
2620	hospital or a health care provider providing services at a
2621	hospital, payments to such hospital or such health care provider
2622	may not exceed 110 percent of the Medicare allowable rate for
2623	any health care service provided.
2624	(b) If a contract has been executed between the department
2625	and a hospital or a health care provider providing services at a
2626	hospital, the department may continue to make payments for
2627	health care services at the currently contracted rates through
2628	the current term of the contract; however, payments may not
2629	exceed 110 percent of the Medicare allowable rate after the
2630	current term of the contract expires or after the contract is
2631	renewed during the 2013-2014 fiscal year.
2632	(c) Payments may not exceed 110 percent of the Medicare
2633	allowable rate under a contract executed on or after July 1,
2634	2014, between the department and a hospital or a health care
2635	provider providing services at a hospital.
2636	(d) Notwithstanding paragraphs (a)-(c), the department may
2637	pay up to 125 percent of the Medicare allowable rate for health
2638	care services at a hospital that demonstrates or has
2639	demonstrated through hospital-audited financial data a negative

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1	7-00541D-14 2014700
2640	operating margin for the previous fiscal year to the Agency for
2641	Health Care Administration.
2642	(e) The department may execute a contract for health care
2643	services at a hospital for rates other than rates based on a
2644	percentage of the Medicare allowable rate.
2645	Section 34. Section 985.66, Florida Statutes, is amended to
2646	read:
2647	985.66 Juvenile justice training academies; staff
2648	development and training; Juvenile Justice Training Trust Fund
2649	(1) LEGISLATIVE PURPOSEIn order to enable the state to
2650	provide a systematic approach to staff development and training
2651	for judges, state attorneys, public defenders, law enforcement
2652	officers, school district personnel, and juvenile justice
2653	program staff <u>which meets</u> that will meet the needs of such
2654	persons in <u>the</u> their discharge of <u>their</u> duties while at the same
2655	time meeting the requirements for the American Correction
2656	Association accreditation by the Commission on Accreditation for
2657	Corrections, it is the purpose of the Legislature to require the
2658	department to establish, maintain, and oversee the operation of
2659	juvenile justice training programs and courses academies in the
2660	state. The purpose of the Legislature in establishing staff
2661	development and training programs is to provide employees of the
2662	department or any private or public entity or contract providers
2663	who provide services or care for youth under the responsibility
2664	of the department with the knowledge and skills to appropriately
2665	interact with youth and provide such care foster better staff
2666	morale and reduce mistreatment and aggressive and abusive
2667	behavior in delinquency programs; to positively impact the
2668	recidivism of children in the juvenile justice system; and to

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2669
      afford greater protection of the public through an improved
2670
      level of services delivered by a professionally trained juvenile
2671
      justice program staff to children who are alleged to be or who
2672
      have been found to be delinquent.
2673
            (2) STAFF DEVELOPMENT AND TRAINING.-The department shall:
2674
            (a) Designate the number and location of the training
2675
      programs and courses academies; assess, design, develop,
2676
      implement, evaluate, maintain, and update the curriculum to be
2677
      used in the training of juvenile justice program staff;
2678
      establish timeframes for participation in and completion of
2679
      training by juvenile justice program staff; develop, implement,
2680
      score, analyze, maintain, and update job-related examinations;
2681
      develop, implement, analyze, and update the types and
2682
      frequencies of evaluations of the training programs, courses,
2683
      and instructors academies; and manage approve, modify, or
2684
      disapprove the budget and contracts for all the training
2685
      deliverables academies, and the contractor to be selected to
2686
      organize and operate the training academies and to provide the
2687
      training curriculum.
2688
            (b) Establish uniform minimum job-related preservice and
2689
      inservice training courses and examinations for juvenile justice
2690
      program staff.
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(c) Consult and cooperate with the state or any political subdivision; any private entity or contractor; and with private and public universities, colleges, community colleges, and other educational institutions concerning the development of juvenile justice training and programs or courses of instruction, including, but not limited to, education and training in the areas of juvenile justice.

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2698
            (d) Enter into contracts and agreements with other
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      agencies, organizations, associations, corporations,
2700
      individuals, or federal agencies as necessary in the execution
2701
      of the powers of the department or the performance of its
2702
      duties.
2703
            (3) JUVENILE JUSTICE TRAINING PROGRAM.-The department shall
2704
      establish a certifiable program for juvenile justice training
2705
      pursuant to this section, and all department program staff. and
2706
      Providers who deliver direct care services pursuant to contract
2707
      with the department shall be required to participate in and
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      successfully complete the department-approved program of
2709
      training pertinent to their areas of responsibility. Judges,
2710
      state attorneys, and public defenders, law enforcement officers,
2711
      and school district personnel, and employees of contract
      providers who provide services or care for youth under the
2712
2713
      responsibility of the department may participate in such a
2714
      training program. For the juvenile justice program staff, the
2715
      department shall, based on a job-task analysis:
2716
            (a) The department shall design, implement, maintain,
2717
      evaluate, and revise a basic training program, including a
2718
      competency-based examination, for the purpose of providing
2719
      minimum employment training qualifications for all juvenile
2720
      justice personnel. All program staff of the department and
2721
      providers who deliver direct-care services who are hired after
      October 1, 1999, shall, at a must meet the following minimum
2722
2723
      requirements:
2724
           1. Be at least 19 years of age.
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2725 2. Be a high school graduate or its equivalent, as
2726 determined by the department.

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7-00541D-14 2014700 2727 3. Not have been convicted of any felony or a misdemeanor 2728 involving perjury or a false statement, or have received a 2729 dishonorable discharge from any of the Armed Forces of the 2730 United States. A Any person who, after September 30, 1999, 2731 pleads guilty or nolo contendere to or is found guilty of any 2732 felony or a misdemeanor involving perjury or false statement is 2733 not eligible for employment, notwithstanding suspension of 2734 sentence or withholding of adjudication. Notwithstanding this 2735 subparagraph, a any person who pled nolo contendere to a 2736 misdemeanor involving a false statement before October 1, 1999, 2737 and who has had such record of that plea sealed or expunged is 2738 not ineligible for employment for that reason. 2739 4. Abide by all the provisions of s. 985.644(1) regarding

2739 4. Ablue by all the provisions of S. 983.044(1) regarding 2740 fingerprinting, and background investigations, and other 2741 screening requirements for personnel.

2742 5. Execute and submit to the department an affidavit-of-2743 application form, approved adopted by the department, attesting 2744 to his or her compliance with subparagraphs 1.-4. The affidavit 2745 must be executed under oath and constitutes an official 2746 statement under s. 837.06. The affidavit must include a 2747 conspicuous statement language that the intentional false 2748 execution of the affidavit constitutes a misdemeanor of the 2749 second degree. The employing agency shall retain the affidavit.

(b) <u>The department shall</u> design, implement, maintain, evaluate, and revise an advanced training program, including a competency-based examination for each training course, which is intended to enhance knowledge, skills, and abilities related to job performance.

(c) The department shall design, implement, maintain,

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7-00541D-14 2014700 2756 evaluate, and revise a career development training program, 2757 including a competency-based examination for each training 2758 course. Career development courses are intended to prepare 2759 personnel for promotion. 2760 (d) The department is encouraged to design, implement, 2761 maintain, evaluate, and revise juvenile justice training 2762 courses, or to enter into contracts for such training courses, 2763 that are intended to provide for the safety and well-being of 2764 both citizens and juvenile offenders. 2765 (4) JUVENILE JUSTICE TRAINING TRUST FUND.-2766 (a) There is created within the State Treasury a Juvenile 2767 Justice Training Trust Fund to be used by the department for the 2768 purpose of funding the development and updating of a job-task 2769 analysis of juvenile justice personnel; the development, 2770 implementation, and updating of job-related training courses and 2771 examinations; and the cost of juvenile justice training courses. 2772 (b) One dollar from every noncriminal traffic infraction 2773 collected pursuant to ss. 318.14(10)(b) and 318.18 shall be 2774 deposited into the Juvenile Justice Training Trust Fund. 2775 (c) In addition to the funds generated by paragraph (b), 2776 the trust fund may receive funds from any other public or 2777 private source.

(d) Funds that are not expended by the end of the budget
cycle or through a supplemental budget approved by the
department shall revert to the trust fund.

2781 (5) ESTABLISHMENT OF JUVENILE JUSTICE TRAINING ACADEMIES. 2782 The number, location, and establishment of juvenile justice
 2783 training academies shall be determined by the department.
 2784 (5) (6) SCHOLARSHIPS AND STIPENDS.-The department shall

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2785	establish criteria to award scholarships or stipends to
2786	qualified juvenile justice personnel who are residents of the
2787	state <u>and</u> who want to pursue a bachelor's or associate in arts
2788	degree in juvenile justice or a related field. The department
2789	shall <u>administer</u> handle the administration of the scholarship or
2790	stipend. The Department of Education shall <u>manage</u> handle the
2791	notes issued for the payment of the scholarships or stipends.
2792	All scholarship and stipend awards shall be paid from the
2793	Juvenile Justice Training Trust Fund upon vouchers approved by
2794	the Department of Education and properly certified by the Chief
2795	Financial Officer. <u>Before</u> Prior to the award of a scholarship or
2796	stipend, the juvenile justice employee must agree in writing to
2797	practice her or his profession in juvenile justice or a related
2798	field for 1 month for each month of grant or to repay the full
2799	amount of the scholarship or stipend together with interest at
2800	the rate of 5 percent per annum over a period <u>of up to</u> not to
2801	exceed 10 years. Repayment <u>is</u> shall be made payable to the state
2802	for deposit into the Juvenile Justice Training Trust Fund.
2803	(6)(7) PARTICIPATION OF CERTAIN PROGRAMS IN THE STATE RISK
2804	MANAGEMENT TRUST FUNDPursuant to s. 284.30, the Division of
2805	Risk Management of the Department of Financial Services is
2806	authorized to insure a private agency, individual, or
2807	corporation operating a state-owned training school under a
2808	contract to carry out the purposes and responsibilities of any
2809	program of the department. The coverage authorized <u>under this</u>

2810 <u>subsection is subject to</u> herein shall be under the same general 2811 terms and conditions as the <u>coverage afforded the</u> department is 2812 <u>insured for its responsibilities</u> under chapter 284.

2813

Section 35. Subsection (5) of section 985.664, Florida

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2814	Statutes, is amended to read:
2815	985.664 Juvenile justice circuit advisory boards
2816	(5) (a) To form the initial juvenile justice circuit
2817	advisory board, the Secretary of Juvenile Justice, in
2818	consultation with the juvenile justice county councils in
2819	existence on October 1, 2013, shall appoint the chair of the
2820	board, who must meet the board membership requirements in
2821	subsection (4). Within 45 days after being appointed, the chair
2822	shall appoint the remaining members to the juvenile justice
2823	circuit advisory board and submit the appointments to the
2824	department for approval.
2825	(b) Thereafter, When a vacancy in the office of the chair
2826	occurs, the Secretary of Juvenile Justice, in consultation with
2827	the juvenile justice circuit advisory board $_{m{ au}}$ shall appoint a new
2828	chair, who must meet the board membership requirements in
2829	subsection (4). The chair shall appoint members to vacant seats
2830	within 45 days after the vacancy and submit the appointments to
2831	the department for approval. The chair serves at the pleasure of
2832	the Secretary of Juvenile Justice.
2833	Section 36. Subsections (1) and (4) of section 985.672,
2834	Florida Statutes, are amended to read:
2835	985.672 Direct-support organization; definition; use of
2836	property; board of directors; audit
2837	(1) DEFINITIONAs used in this section, the term "direct-
2838	support organization" means an organization whose sole purpose
2839	is to support the juvenile justice system and which is:
2840	(a) A corporation not-for-profit incorporated under chapter
2841	617 and which is approved by the Department of State;
2842	(b) Organized and operated to conduct programs and
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2843	activities; to raise funds; to request and receive grants,
2844	gifts, and bequests of moneys; to acquire, receive, hold,
2845	invest, and administer, in its own name, securities, funds,
2846	objects of value, or other property, real or personal <u>property</u> ;
2847	and to make expenditures to or for the direct or indirect
2848	benefit of the Department of Juvenile Justice or the juvenile
2849	justice system operated by a county commission or a circuit
2850	board;
2851	(c) Determined by the Department of Juvenile Justice to be
2852	consistent with the goals of the juvenile justice system, in the
2853	best interest of the state, and in accordance with the adopted
2854	goals and mission of the Department of Juvenile Justice.
2855	
2856	Expenditures of the organization shall be expressly used <u>for the</u>
2857	prevention and amelioration of to prevent and ameliorate
2858	juvenile delinquency. <u>Such funds</u> The expenditures of the direct-
2859	support organization may not be used for the purpose of lobbying
2860	as defined in s. 11.045.
2861	(4) USE OF PROPERTY.—The department may <u>allow</u> permit ,
2862	without charge, appropriate use of fixed property <u>,</u> and
2863	facilities, and personnel services of the juvenile justice
2864	system by the direct-support organization, subject to the
2865	provisions of this section. For the purposes of this subsection,
2866	the term "personnel services" includes full-time or part-time
2867	personnel as well as payroll processing services.
2868	(a) The department may prescribe any condition with which
2869	the direct-support organization must comply in order to use
2870	fixed property or facilities of the juvenile justice system.
2871	(b) The department may not permit the use of any fixed

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2872	property or facilities of the juvenile justice system by the
2873	direct-support organization if it does not provide equal
2874	membership and employment opportunities to all persons
2875	regardless of race, color, religion, sex, age, or national
2876	origin.
2877	(c) The department shall adopt rules prescribing the
2878	procedures by which the direct-support organization is governed
2879	and any conditions with which a direct-support organization must
2880	comply to use property or facilities of the department.
2881	Section 37. Section 985.682, Florida Statutes, is amended
2882	to read:
2883	985.682 Siting of facilities ; study; criteria
2884	(1) The department is directed to conduct or contract for a
2885	statewide comprehensive study to determine current and future
2886	needs for all types of facilities for children committed to the
2887	custody, care, or supervision of the department under this
2888	chapter.
2889	(2) The study shall assess, rank, and designate appropriate
2890	sites, and shall be reflective of the different purposes and
2891	uses for all facilities, based upon the following criteria:
2892	(a) Current and future estimates of children originating
2893	from each county;
2894	(b) Current and future estimates of types of delinquent
2895	acts committed in each county;
2896	(c) Geographic location of existing facilities;
2897	(d) Availability of personnel within the local labor
2898	market;
2899	(e) Current capacity of facilities in the area;
2900	(f) Total usable and developable acreage of various sites
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2901	based upon the use and purpose of the facility;
2902	(g) Accessibility of each site to existing utility,
2903	transportation, law enforcement, health care, fire protection,
2904	refuse collection, water, and sewage disposal services;
2905	(h) Susceptibility of each site to flooding hazards or
2906	other adverse natural environmental consequences;
2907	(i) Site location in relation to desirable and undesirable
2908	proximity to other public facilities, including schools;
2909	(j) Patterns of residential growth and projected population
2910	growth; and
2911	(k) Such other criteria as the department, in conjunction
2912	with local governments, deems appropriate.
2913	(3) The department shall recommend certification of the
2914	study by the Governor and Cabinet within 2 months after its
2915	receipt.
2916	(4) Upon certification of the study by the Covernor and
2917	Cabinet, the department shall notify those counties designated
2918	as being in need of a facility.
2919	(1) (5) When the department or a contracted provider
2920	proposes a site for a juvenile justice facility, the department
2921	or provider shall request that the local government having
2922	jurisdiction over such proposed site determine whether or not
2923	the proposed site is appropriate for public use under local
2924	government comprehensive plans, local land use ordinances, local
2925	zoning ordinances or regulations, and other local ordinances in
2926	effect at the time of such request. If no such determination is
2927	made within 90 days after the request, it <u>is</u> shall be presumed
2928	that the proposed site is in compliance with such plans,
2929	ordinances, or regulations.

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(2) (6) If the local government determines within 90 days 2930 2931 after the request that construction of a facility on the 2932 proposed site does not comply with any such plan, ordinance, or 2933 regulation, the department may request a modification of such 2934 plan, ordinance, or regulation without having an ownership 2935 interest in such property. For the purposes of this section, 2936 modification includes, but is not limited to, a variance, 2937 rezoning, special exception, or any other action of the local 2938 government having jurisdiction over the proposed site which 2939 would authorize siting of a facility.

2940 (3) (7) Upon receipt of a request for modification from the 2941 department, the local government may recommend and hold a public 2942 hearing on the request for modification in the same manner as 2943 for a rezoning as provided under the appropriate special or 2944 local law or ordinance, except that such proceeding shall be 2945 recorded by tape or by a certified court reporter and made 2946 available for transcription at the expense of any interested 2947 party.

2948 (4) (4) (8) If When the department requests such a modification 2949 and it is denied by the local government, the local government 2950 or the department shall initiate the dispute resolution process 2951 established under s. 186.509 to reconcile differences on the 2952 siting of correctional facilities between the department, local 2953 governments, and private citizens. If the regional planning 2954 council has not established a dispute resolution process 2955 pursuant to s. 186.509, the department shall establish, by rule, 2956 procedures for dispute resolution. The dispute resolution 2957 process must shall require the parties to commence meetings to 2958 reconcile their differences. If the parties fail to resolve

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7-00541D-14 2014700 2959 their differences within 30 days after the denial, they the 2960 parties shall engage in voluntary mediation or a similar 2961 process. If the parties fail to resolve their differences by 2962 mediation within 60 days after the denial, or if no action is 2963 taken on the department's request within 90 days after the 2964 request, the department must appeal the decision of the local 2965 government on the requested modification of local plans, 2966 ordinances, or regulations to the Governor and Cabinet. A Any 2967 dispute resolution process initiated under this section must 2968 conform to the time limitations set forth in this subsection 2969 herein. However, upon agreement of all parties, the time limits 2970 may be extended, but in no event may the dispute resolution 2971 process <u>may not</u> extend <u>beyond</u> over 180 days. 2972 (5) (9) The Governor and Cabinet shall consider the 2973 following when determining whether to grant the appeal from the 2974 decision of the local government on the requested modification: 2975 (a) The record of the proceedings before the local 2976 government. 2977 (b) Reports and studies by any other agency relating to

2978 matters within the jurisdiction of such agency which may be 2979 potentially affected by the proposed site.

2980 (c) The statewide study, as established in subsection (1); 2981 other Existing studies; reports and information maintained by 2982 the department as the Governor and Cabinet may request 2983 addressing the feasibility and availability of alternative sites 2984 in the general area; and the need for a facility in the area 2985 based on the average number of petitions, commitments, and 2986 transfers into the criminal court from the county to state 2987 facilities for the 3 most recent $\frac{3}{2}$ calendar years.

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2988 (6) (10) The Governor and Cabinet, upon determining that the 2989 local government has not recommended a no feasible alternative 2990 site and that the interests of the state in providing facilities 2991 outweigh the concerns of the local government, shall authorize 2992 construction and operation of a facility on the proposed site 2993 notwithstanding any local plan, ordinance, or regulation. 2994 (7) (11) The Governor and Cabinet may adopt rules of 2995 procedure to govern these proceedings in accordance with the 2996 provisions of s. 120.54. 2997 (8) (12) Actions taken by the department or the Governor and 2998 Cabinet pursuant to this section are not shall not be subject to 2999 the provisions of ss. 120.56, 120.569, and 120.57. The decision 3000 by the Governor and Cabinet is shall be subject to judicial 3001 review pursuant to s. 120.68 in the District Court of Appeal, First District. 3002 3003 (9) (13) All other departments and agencies of the state 3004 shall cooperate fully with the department to accomplish the siting of facilities for juvenile offenders. 3005 3006 (10) (14) It is the intent of the Legislature to expedite 3007 the siting of, acquisition of land for, and construction by the 3008 Department of Juvenile Justice of state juvenile justice 3009 facilities operated by the department or a private vendor under 3010 contract with the department. Other agencies shall cooperate 3011 with the department and expeditiously fulfill their 3012 responsibilities to avoid unnecessary delay in the siting of, 3013 acquisition of land for, and construction of state juvenile 3014 justice facilities. This section and all other laws of the state 3015 shall be construed to accomplish this intent. This section takes shall take precedence over any other law to the contrary. 3016

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7-00541D-14 2014700 (11) (15) (a) The department shall acquire land and erect 3017 3018 juvenile justice facilities necessary to accommodate children 3019 committed to the custody, care, or supervision of the 3020 department, and shall make additional alterations to facilities 3021 to accommodate any increase in the number of children. The 3022 department shall establish adequate accommodations for staff of 3023 the department who are required to reside continuously within 3024 the facilities. 3025 (b) Notwithstanding s. 255.25(1) and contingent upon 3026 available funds, the department may enter into lease-purchase 3027 agreements to provide juvenile justice facilities for housing 3028 committed youths, contingent upon available funds. The 3029 facilities provided through such agreements must meet the 3030 program plan and specifications of the department. The 3031 department may enter into such lease agreements with private 3032 corporations and other governmental entities. However, with the 3033 exception of contracts entered into with other governmental 3034 entities, and notwithstanding s. 255.25(3)(a), a lease agreement 3035 may not be entered into except upon advertisement for the 3036 receipt of competitive bids and award to the lowest and best 3037 bidder except if contracting with other governmental entities. 3038 (c) A lease-purchase agreement that is for a term extending 3039 beyond the end of a fiscal year is subject to the provisions of 3040 s. 216.311. 3041 (12) (16) (a) Notwithstanding s. 253.025 or s. 287.057, if 3042 when the department finds it necessary for timely site

3043 acquisition, it may contract, without using the competitive 3044 selection procedure, with an appraiser whose name is on the list 3045 of approved appraisers maintained by the Division of State Lands

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3046
      of the Department of Environmental Protection under s.
3047
      253.025(6)(b). If When the department directly contracts for
3048
      appraisal services, it must contract with an approved appraiser
3049
      who is not employed by the same appraisal firm for review
3050
      services.
3051
            (b) Notwithstanding s. 253.025(6), the department may
3052
      negotiate and enter into an option contract before an appraisal
3053
      is obtained. The option contract must state that the final
3054
      purchase price may not exceed the maximum value allowed by law.
3055
      The consideration for such an option contract may not exceed 10
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      percent of the estimate obtained by the department or 10 percent
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      of the value of the parcel, whichever amount is greater.
            (c) This subsection applies only to a purchase or
3058
3059
      acquisition of land for juvenile justice facilities. This
3060
      subsection does not modify the authority of the Board of
3061
      Trustees of the Internal Improvement Trust Fund or the Division
3062
      of State Lands of the Department of Environmental Protection to
3063
      approve any contract for purchase of state lands as provided by
3064
      law or to require policies and procedures to obtain clear legal
3065
      title to parcels purchased for state purposes.
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           (13) (17) The department may sell, to the best possible
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      advantage, any detached parcels of land belonging to the bodies
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      of land purchased for the state juvenile justice facilities. The
3069
      department may purchase any parcel of land contiguous with the
3070
      lands purchased for state juvenile justice facilities.
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3071 <u>(14) (18)</u> The department may begin preliminary site 3072 preparation and obtain the appropriate permits for the 3073 construction of a juvenile justice facility after approval <u>of</u> 3074 <u>the lease-purchase agreement or option contract</u> by the Board of

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3075	 Trustees of the Internal Improvement Trust Fund of the lease
3076	purchase agreement or option contract if, in the department
3077	determines that department's discretion, commencing construction
3078	is in the best interests of the state.
3079	(15) (19) If Insofar as the provisions of this section is
3080	are inconsistent with the provisions of any other general,
3081	special, or local law, general, special, or local, the
3082	provisions of this section <u>is</u> are controlling. Additionally, the
3083	criteria and procedures <u>established under</u> set forth in this
3084	section supersede and are in lieu of any review and approval
3085	required by s. 380.06.
3086	Section 38. Section 985.69, Florida Statutes, is amended to
3087	read:
3088	985.69 <u>Repair and maintenance</u> One-time startup funding for
3089	juvenile justice purposesFunds from juvenile justice
3090	appropriations may be <u>used</u> utilized as one-time startup funding
3091	for juvenile justice purposes that include, but are not limited
3092	to, remodeling or renovation of existing facilities,
3093	construction costs, leasing costs, purchase of equipment and
3094	furniture, site development, and other necessary and reasonable
3095	costs associated with the <u>repair and maintenance</u> startup of
3096	facilities or programs.
3097	Section 39. Section 985.694, Florida Statutes, is repealed.
3098	Section 40. Paragraph (a) of subsection (1) of section
3099	985.701, Florida Statutes, is reordered and amended to read:
3100	985.701 Sexual misconduct prohibited; reporting required;
3101	penalties
3102	(1)(a)1. As used in this <u>section</u> subsection, the term:
3103	<u>c.</u> a. "Sexual misconduct" means fondling the genital area,
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3104	groin, inner thighs, buttocks, or breasts of a person; the oral,
3105	anal, or vaginal penetration by or union with the sexual organ
3106	of another; or the anal or vaginal penetration of another by any
3107	other object. The term does not include an act done for a bona
3108	fide medical purpose or an internal search conducted in the
3109	lawful performance of duty by an employee of the department or
3110	an employee of a provider under contract with the department.
3111	<u>a.b. "Employee" <u>means a</u> includes paid staff <u>member</u> members,</u>
3112	<u>a volunteer</u> volunteers , <u>or an intern</u> and interns who <u>works</u> work
3113	in a department program or a program operated by a provider
3114	under a contract.
3115	b. "Juvenile offender" means a person of any age who is
3116	detained or supervised by, or committed to the custody of, the
3117	department.
3118	2. An employee who engages in sexual misconduct with a
3119	juvenile offender detained or supervised by, or committed to the
3120	custody of, the department commits a felony of the second
3121	degree, punishable as provided in s. 775.082, s. 775.083, or s.
3122	775.084. An employee may be found guilty of violating this
3123	subsection without having committed the crime of sexual battery.
3124	3. The consent of the juvenile offender to any act of
3125	sexual misconduct is not a defense to prosecution under this
3126	subsection.
3127	4. This subsection does not apply to an employee of the
3128	<code>department_</code> or an employee of a provider under contract with the
3129	department, who:
3130	a. Is legally married to a juvenile offender who is
3131	detained or supervised by, or committed to the custody of, the
3132	department.

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3133	b. Has no reason to believe that the person with whom the
3134	employee engaged in sexual misconduct is a juvenile offender
3135	detained or supervised by, or committed to the custody of, the
3136	department.
3137	Section 41. Section 985.702, Florida Statutes, is created
3138	to read:
3139	985.702 Willful and malicious neglect of a juvenile
3140	offender prohibited; reporting required; penalties
3141	(1) As used in this section, the term:
3142	(a) "Employee" means a paid staff member, volunteer, or
3143	intern who works in a department program or a program operated
3144	by a provider under a contract with the department.
3145	(b) "Juvenile offender" means a person of any age who is
3146	detained by, or committed to the custody of, the department.
3147	(c) "Neglect" means:
3148	1. An employee's failure or omission to provide a juvenile
3149	offender with the proper level of care, supervision, and
3150	services necessary to maintain the juvenile offender's physical
3151	and mental health, including, but not limited to, adequate food,
3152	nutrition, clothing, shelter, supervision, medicine, and medical
3153	services; or
3154	2. An employee's failure to make a reasonable effort to
3155	protect a juvenile offender from abuse, neglect, or exploitation
3156	by another person.
3157	(2)(a) An employee who willfully and maliciously neglects a
3158	juvenile offender without causing great bodily harm, permanent
3159	disability, or permanent disfigurement to a juvenile offender,
3160	commits a felony of the third degree, punishable as provided in
3161	<u>s. 775.082, s. 775.083, or s. 775.084.</u>

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3162	(b) An employee who willfully and maliciously neglects a
3163	juvenile offender and in so doing causes great bodily harm,
3164	permanent disability, or permanent disfigurement to a juvenile
3165	offender, commits a felony of the second degree, punishable as
3166	provided in s. 775.082, s. 775.083, or s. 775.084.
3167	(c) Notwithstanding prosecution, any violation of paragraph
3168	(a) or paragraph (b), as determined by the Public Employees
3169	Relations Commission, constitutes sufficient cause under s.
3170	110.227 for dismissal from employment with the department, and a
3171	person who commits such violation may not again be employed in
3172	any capacity in connection with the juvenile justice system.
3173	(3) An employee who witnesses the neglect of a juvenile
3174	offender shall immediately report the incident to the
3175	department's incident hotline and prepare, date, and sign an
3176	independent report that specifically describes the nature of the
3177	incident, the location and time of the incident, and the persons
3178	involved. The employee shall deliver the report to the
3179	employee's supervisor or program director, who must provide
3180	copies to the department's inspector general and the circuit
3181	juvenile justice manager. The inspector general shall
3182	immediately conduct an appropriate administrative investigation,
3183	and, if there is probable cause to believe that a violation of
3184	subsection (2) has occurred, the inspector general shall notify
3185	the state attorney in the circuit in which the incident
3186	occurred.
3187	(4)(a) A person who is required to prepare a report under
3188	this section and who knowingly or willfully fails to do so, or
3189	who knowingly or willfully prevents another person from doing
3190	so, commits a misdemeanor of the first degree, punishable as
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3191	provided in s. 775.082 or s. 775.083.
3192	(b) A person who knowingly or willfully submits inaccurate,
3193	incomplete, or untruthful information with respect to a report
3194	required under this section commits a misdemeanor of the first
3195	degree, punishable as provided in s. 775.082 or s. 775.083.
3196	(c) A person who knowingly or willfully coerces or
3197	threatens any other person with the intent to alter testimony or
3198	a written report regarding the neglect of a juvenile offender
3199	commits a felony of the third degree, punishable as provided in
3200	s. 775.082, s. 775.083, or s. 775.084.
3201	Section 42. Paragraphs (c) and (f) of subsection (3) of
3202	section 943.0582, Florida Statutes, are amended to read:
3203	943.0582 Prearrest, postarrest, or teen court diversion
3204	program expunction
3205	(3) The department shall expunge the nonjudicial arrest
3206	record of a minor who has successfully completed a prearrest or
3207	postarrest diversion program if that minor:
3208	(c) Submits to the department, with the application, an
3209	official written statement from the state attorney for the
3210	county in which the arrest occurred certifying that he or she
3211	has successfully completed that county's prearrest or postarrest
3212	diversion program, that his or her participation in the program
3213	was based on an arrest for a nonviolent misdemeanor, and that he
3214	or she has not otherwise been charged by the state attorney with
3215	or found to have committed any criminal offense or comparable
3216	ordinance violation.
3217	(f) Has never, prior to filing the application for
3218	expunction, been charged by the state attorney with or been
3219	found to have committed any criminal offense or comparable

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3220	ordinance violation.
3221	Section 43. Section 945.75, Florida Statutes, is repealed.
3222	Section 44. Paragraphs (e) through (i) of subsection (2),
3223	paragraphs (g) and (k) of subsection (3), paragraph (b) of
3224	subsection (5), paragraph (d) of subsection (8), and paragraph
3225	(c) of subsection (10) of section 121.0515, Florida Statutes,
3226	are amended to read:
3227	121.0515 Special Risk Class
3228	(2) MEMBERSHIP
3229	(c) Effective July 1, 2001, "special risk member" includes
3230	any member who is employed as a youth custody officer by the
3231	Department of Juvenile Justice and meets the special criteria
3232	set forth in paragraph (3)(g).
3233	<u>(e)</u> Effective October 1, 2005, through June 30, 2008,
3234	the member must be employed by a law enforcement agency or
3235	medical examiner's office in a forensic discipline and meet the
3236	special criteria set forth in paragraph <u>(3)(g)</u> (3)(h) .
3237	<u>(f)</u> Effective July 1, 2008, the member must be employed
3238	by the Department of Law Enforcement in the crime laboratory or
3239	by the Division of State Fire Marshal in the forensic laboratory
3240	and meet the special criteria set forth in paragraph (3)(h)
3241	(3)(i) .
3242	(g) (h) Effective July 1, 2008, the member must be employed
3243	by a local government law enforcement agency or medical
3244	examiner's office and meet the special criteria set forth in
3245	paragraph <u>(3)(i)</u> (3)(j) .
3246	(h) (i) Effective August 1, 2008, "special risk member"
3247	includes any member who meets the special criteria for continued
3248	membership set forth in paragraph $(3)(j)$ $(3)(k)$.
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7-00541D-14 2014700 3249 (3) CRITERIA.-A member, to be designated as a special risk 3250 member, must meet the following criteria: 3251 (g) Effective July 1, 2001, the member must be employed as 3252 a youth custody officer and be certified, or required to be 3253 certified, in compliance with s. 943.1395. In addition, the 3254 member's primary duties and responsibilities must be the 3255 supervised custody, surveillance, control, investigation, 3256 apprehension, arrest, and counseling of assigned juveniles 3257 within the community;

3258 <u>(j)(k)</u> The member must have already qualified for and be 3259 actively participating in special risk membership under 3260 paragraph (a), paragraph (b), or paragraph (c), must have 3261 suffered a qualifying injury as defined in this paragraph, must 3262 not be receiving disability retirement benefits as provided in 3263 s. 121.091(4), and must satisfy the requirements of this 3264 paragraph.

3265 1. The ability to qualify for the class of membership defined in paragraph (2)(h) $\frac{(2)(i)}{(2)(i)}$ occurs when two licensed 3266 3267 medical physicians, one of whom is a primary treating physician 3268 of the member, certify the existence of the physical injury and 3269 medical condition that constitute a qualifying injury as defined 3270 in this paragraph and that the member has reached maximum 3271 medical improvement after August 1, 2008. The certifications 3272 from the licensed medical physicians must include, at a minimum, 3273 that the injury to the special risk member has resulted in a 3274 physical loss, or loss of use, of at least two of the following: 3275 left arm, right arm, left leg, or right leg; and:

3276 a. That this physical loss or loss of use is total and 3277 permanent, except if the loss of use is due to a physical injury

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7-00541D-14 2014700 3278 to the member's brain, in which event the loss of use is 3279 permanent with at least 75 percent loss of motor function with 3280 respect to each arm or leg affected. 3281 b. That this physical loss or loss of use renders the 3282 member physically unable to perform the essential job functions 3283 of his or her special risk position. 3284 c. That, notwithstanding this physical loss or loss of use, 3285 the individual can perform the essential job functions required by the member's new position, as provided in subparagraph 3. 3286 3287 d. That use of artificial limbs is not possible or does not 3288 alter the member's ability to perform the essential job 3289 functions of the member's position. 3290 e. That the physical loss or loss of use is a direct result 3291 of a physical injury and not a result of any mental, 3292 psychological, or emotional injury. 3293 2. For the purposes of this paragraph, "qualifying injury" 3294 means an injury sustained in the line of duty, as certified by 3295 the member's employing agency, by a special risk member that 3296 does not result in total and permanent disability as defined in 3297 s. 121.091(4)(b). An injury is a qualifying injury if the injury is a physical injury to the member's physical body resulting in 3298 3299 a physical loss, or loss of use, of at least two of the 3300 following: left arm, right arm, left leg, or right leg. 3301 Notwithstanding any other provision of this section, an injury 3302 that would otherwise qualify as a qualifying injury is not 3303 considered a qualifying injury if and when the member ceases 3304 employment with the employer for whom he or she was providing 3305 special risk services on the date the injury occurred. 3306 3. The new position, as described in sub-subparagraph 1.c.,

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3307	that is required for qualification as a special risk member
3308	under this paragraph is not required to be a position with
3309	essential job functions that entitle an individual to special
3310	risk membership. Whether a new position as described in sub-
3311	subparagraph l.c. exists and is available to the special risk
3312	member is a decision to be made solely by the employer in
3313	accordance with its hiring practices and applicable law.
3314	4. This paragraph does not grant or create additional
3315	rights for any individual to continued employment or to be hired
3316	or rehired by his or her employer that are not already provided
3317	within the Florida Statutes, the State Constitution, the
3318	Americans with Disabilities Act, if applicable, or any other
3319	applicable state or federal law.
3320	(5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP
3321	(b) Any member who is a special risk member on July 1,
3322	2008, and who became eligible to participate under paragraph
3323	<u>(3)(g)</u> (3)(h) but fails to meet the criteria for Special Risk
3324	Class membership established by paragraph <u>(3)(h)</u> (3)(i) or
3325	paragraph <u>(3)(i)</u> (3)(j) shall have his or her special risk
3326	designation removed and thereafter shall be a Regular Class
3327	member and earn only Regular Class membership credit. The
3328	department may review the special risk designation of members to
3329	determine whether or not those members continue to meet the
3330	criteria for Special Risk Class membership.
3331	(8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS
3332	(d) Notwithstanding any other provision of this subsection,
3333	this subsection does not apply to any special risk member who

3334 qualifies for continued membership pursuant to paragraph (3)(j)3335 (3)(k).

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7-00541D-14 2014700 3336 (10) CREDIT FOR UPGRADED SERVICE.-3337 (c) Any member of the Special Risk Class who has earned 3338 creditable service through June 30, 2008, in another membership 3339 class of the Florida Retirement System in a position with the 3340 Department of Law Enforcement or the Division of State Fire 3341 Marshal and became covered by the Special Risk Class as 3342 described in paragraph (3) (h) $\frac{(3)(i)}{(3)(i)}$, or with a local government 3343 law enforcement agency or medical examiner's office and became 3344 covered by the Special Risk Class as described in paragraph 3345 (3) (i) $\frac{(3)}{(j)}$, which service is within the purview of the 3346 Special Risk Class, and is employed in such position on or after 3347 July 1, 2008, may purchase additional retirement credit to 3348 upgrade such service to Special Risk Class service, to the 3349 extent of the percentages of the member's average final compensation provided in s. 121.091(1)(a)2. The cost for such 3350 3351 credit must be an amount representing the actuarial accrued 3352 liability for the difference in accrual value during the 3353 affected period of service. The cost shall be calculated using 3354 the discount rate and other relevant actuarial assumptions that 3355 were used to value the Florida Retirement System Pension Plan 3356 liabilities in the most recent actuarial valuation. The division 3357 shall ensure that the transfer sum is prepared using a formula 3358 and methodology certified by an enrolled actuary. The cost must 3359 be paid immediately upon notification by the division. The local 3360 government employer may purchase the upgraded service credit on 3361 behalf of the member if the member has been employed by that 3362 employer for at least 3 years. Section 45. Subsection (5) of section 985.045, Florida 3363

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Statutes, is amended to read:

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3365	985.045 Court records
3366	(5) This chapter does not prohibit a circuit court from
3367	providing a restitution order containing the information
3368	prescribed in <u>s. 985.0301(5)(e)</u>
3369	collection court or a private collection agency for the sole
3370	purpose of collecting unpaid restitution ordered in a case in
3371	which the circuit court has retained jurisdiction over the child
3372	and the child's parent or legal guardian. The collection court
3373	or private collection agency shall maintain the confidential
3374	status of the information to the extent such confidentiality is
3375	provided by law.
3376	Section 46. Section 985.721, Florida Statutes, is amended
3377	to read:
3378	985.721 Escapes from secure detention or residential
3379	commitment facility.—An escape from:
3380	(1) Any secure detention facility maintained for the
3381	temporary detention of children, pending adjudication,
3382	disposition, or placement;
3383	(2) Any residential commitment facility described in <u>s.</u>
3384	<u>985.03(41)</u> s. 985.03(46), maintained for the custody, treatment,
3385	punishment, or rehabilitation of children found to have
3386	committed delinquent acts or violations of law; or
3387	(3) Lawful transportation to or from any such secure
3388	detention facility or residential commitment facility,
3389	
3390	constitutes escape within the intent and meaning of s. 944.40
3391	and is a felony of the third degree, punishable as provided in
3392	s. 775.082, s. 775.083, or s. 775.084.
3393	Section 47. This act shall take effect July 1, 2014.
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