The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Tuesday, March 4, 2014
TIME: 8:00 —9:30 a.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Lee, Chair; Senator Soto, Vice Chair; Senators Bradley, Gardiner, Joyner, Latvala, Richter, Ring, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 448** Evers (Compare CS/CS/H 89, S 438)	Threatened Use of Force; Applying provisions relating to the use of force in defense of persons to the threatened use of force; applying presumption relating to the use of deadly force to the threatened use of deadly force in the defense of a residence and similar circumstances; applying immunity provisions that relate to the use of force to the threatened use of force; providing that a person is not justified in the threatened use of force to resist an arrest by a law enforcement officer, etc. CJ 01/08/2014 Favorable JU 02/11/2014 JU 03/04/2014 RC	
2	**SB 592** Criminal Justice	Criminal Justice; Requiring the Department of Corrections to verify the authenticity of certain court orders before releasing a person from incarceration, etc. JU 02/11/2014 Not Considered JU 03/04/2014	
3	**CS/SB 182** Children, Families, and Elder Affairs / Stargel (Compare CS/H 73, H 7027, CS/CS/CS/S 526)	Child Pornography; Defining the terms “child pornography” and “minor”; including possession of child pornography within specified criminal offenses; prohibiting certain conditional releasees, probationers, or community controllees from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating material, etc. CJ 12/09/2013 Favorable CF 02/11/2014 Fav/CS JU 03/04/2014	

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	

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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 448
INTRODUCER:	Senator Evers
SUBJECT:	Threatened Use of Force
DATE:	February 21, 2014
REVISED:	03/03/14

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	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 misdemeanor[1] 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:

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[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. http://famm.org/orville-lee-wollard/ (last visited on November 20, 2013); http://www.theledger.com/article/20090619/NEWS/906195060 .

[16] *Id*.

- 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.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/11/2014	.	
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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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weapon is an element of the felony, and the conviction was for:

a. Murder;

b. Sexual battery;

c. Robbery;

d. Burglary;

e. Arson;

~~f. Aggravated assault;~~

f.~~g.~~ Aggravated battery;

g.~~h.~~ Kidnapping;

h.~~i.~~ Escape;

i.~~j.~~ Aircraft piracy;

j.~~k.~~ Aggravated child abuse;

k.~~l.~~ Aggravated abuse of an elderly person or disabled adult;

l.~~m.~~ Unlawful throwing, placing, or discharging of a destructive device or bomb;

m.~~n.~~ Carjacking;

n.~~o.~~ Home-invasion robbery;

o.~~p.~~ Aggravated stalking;

p.~~q.~~ Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1); or

q.~~r.~~ Possession of a firearm by a felon

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.-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

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defined in s. 790.001 and, as the result of the discharge, death or great bodily harm was inflicted upon any person, the convicted person shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison.

(3)(a)1. Any person who is convicted of a felony or an attempt to commit a felony, regardless of whether the use of a firearm is an element of the felony, and the conviction was for:

a. Murder;

b. Sexual battery;

c. Robbery;

d. Burglary;

e. Arson;

~~f. Aggravated assault;~~

f.~~g.~~ Aggravated battery;

g.~~h.~~ Kidnapping;

h.~~i.~~ Escape;

i.~~j.~~ Sale, manufacture, delivery, or intent to sell, manufacture, or deliver any controlled substance;

j.~~k.~~ Aircraft piracy;

k.~~l.~~ Aggravated child abuse;

l.~~m.~~ Aggravated abuse of an elderly person or disabled adult;

m.~~n.~~ Unlawful throwing, placing, or discharging of a destructive device or bomb;

n.~~o.~~ Carjacking;

o.~~p.~~ Home-invasion robbery;

p.~~q.~~ Aggravated stalking; or

q.~~r.~~ Trafficking in cannabis, trafficking in cocaine,

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capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1);

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.

2. Any person who is convicted of a felony or an attempt to commit a felony listed in subparagraph (a)1., 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 semiautomatic firearm and its high-capacity box magazine or a "machine gun" 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 subparagraph (a)1., 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 semiautomatic firearm and its high-capacity box magazine or a "machine gun" as defined in s. 790.001 and, as the result of the discharge, death or great bodily harm was inflicted upon any person, the convicted person shall be

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sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison.

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

And the title is amended as follows:

Delete line 3

and insert:

providing legislative findings and intent; amending s. 775.087, F.S.; removing aggravated assault from the list of offenses that qualify for certain minimum mandatory sentences; amending s.

266424

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/11/2014	.	
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The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment

Between lines 65 and 66
insert:

Section 7. Section 776.052, Florida Statutes, is created to read:

776.052 Threatened use of force.—

When a person may lawfully use force in self-defense, the discharge of a firearm as a warning and without the intent to cause harm and without causing harm to another is a threat to use force, not the use of deadly force.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/11/2014	.	
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The Committee on Judiciary (Thrasher) recommended the following:

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

Delete lines 53 - 131
and insert:
person.—
(1) A person is justified in using force, except deadly force, or threatening to use force 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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justified in using or threatening to use ~~the use of~~ deadly force and does not have a duty to retreat if:

(a) ~~(1)~~ He or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or

(b) ~~(2)~~ Under those circumstances permitted pursuant to s. 776.013.

(2) When a person may lawfully use force in self-defense, the discharge of a firearm as a warning and without the intent to cause harm and without causing harm to another is a threat to use force, not the use of deadly force.

Section 3. Subsections (1), (2), and (3) of section 776.013, Florida Statutes, are amended to read:

776.013 Home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.—

(1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person’s will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible

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

(2) The presumption set forth in subsection (1) does not 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 guardianship 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

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

(3) A person who is not engaged in an unlawful activity and 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 use or threaten to use ~~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.

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

776.031 Use or threatened use of force in defense of property ~~others~~.—A person is justified in using ~~the use of~~ force, except deadly force, or threatening to use force against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. However, a ~~the~~ person is justified in using ~~the use of~~ deadly force only if he or she

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

And the title is amended as follows:

Delete line 6

and insert:

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

LEGISLATIVE ACTION

Senate	.	House
Comm: PEND	.	
02/11/2014	.	
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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 .—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:

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

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as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for

expunction of a criminal history record may be denied at the sole discretion of the court.

(5) 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-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 subsection 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.

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

And the title is amended as follows:

Delete line 22

and insert:

officer; creating s. 776.09, F.S.; providing that a person is eligible to apply for and receive a certificate of eligibility for expunction, notwithstanding the eligibility requirements, if the charging document in the case is not filed or is dismissed because it is found that the person acted in lawful self-defense pursuant to the provisions related to the justifiable use of force in ch. 776; amending s. 943.0585, F.S.; providing that a person is eligible to apply for and receive a certificate of eligibility for expunction, notwithstanding the eligibility

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

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LEGISLATIVE ACTION

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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document, or decides not to file 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 documented in writing and retained in the files of 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:

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

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

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to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(5) EXCEPTION PROVIDED.—Notwithstanding the eligibility 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:

1. A valid certificate of eligibility for expunction issued

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by the department pursuant to subsection (5).

2. The petitioner's sworn statement attesting that the petitioner is eligible for such an expunction to the best of his or her knowledge or belief.

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

(c) This subsection 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.

(d) Subsections (3) and (4) shall apply to expunction ordered under subsection (5).

(e) The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction under subsection (5).

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

And the title is amended as follows:

Delete line 22

and insert:

officer; creating s. 776.09, F.S.; providing that a person is eligible to apply for a certificate of eligibility for expunction, notwithstanding the eligibility requirements, if the charging document in the case is not filed or is dismissed because it is

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

By Senator Evers

2-00388B-14 2014448__

A bill to be entitled

An act relating to the threatened use of force; providing legislative findings and intent; amending s. 776.012, F.S.; applying provisions relating to the use of force in defense of persons to the threatened use of force; amending s. 776.013, F.S.; applying presumption relating to the use of deadly force to the threatened use of deadly force in the defense of a residence and similar circumstances; applying provisions relating to such use of force to the threatened use of force; amending s. 776.031, F.S.; applying provisions relating to the use of force in defense of property to the threatened use of force; amending s. 776.032, F.S.; applying immunity provisions that relate to the use of force to the threatened use of force; amending s. 776.041, F.S.; applying provisions relating to the use of force by an aggressor to the threatened use of force; providing exceptions; amending s. 776.051, F.S.; providing that a person is not justified in the threatened use of force to resist an arrest by a law enforcement officer; providing an effective date.

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

Section 1. (1) The Legislature finds that persons have been criminally prosecuted and have been sentenced to mandatory minimum terms of imprisonment pursuant to s. 775.087, Florida Statutes, for threatening to use force in a manner and under

circumstances that would have been justifiable under chapter 776, Florida Statutes, had force actually been used.

(2) The Legislature intends to:

(a) Provide criminal and civil immunity to those who threaten to use force if the threat was made in a manner and under circumstances that would have been immune under chapter 776, Florida Statutes, had force actually been used.

(b) Clarify that those who threaten to use force may claim self-defense if the threat was made in a manner and under circumstances that would have been justifiable under chapter 776, Florida Statutes, had force actually been used.

(c) Ensure that those who threaten to use force in a manner and under circumstances that are justifiable under chapter 776, Florida Statutes, are not sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, Florida Statutes.

(d) Encourage those who have been sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, Florida Statutes, for threatening to use force in a manner and under circumstances that are justifiable under chapter 776, Florida Statutes, to apply for executive clemency.

Section 2. Section 776.012, Florida Statutes, is amended to read:

776.012 Use or threatened use of force in defense of person.—A person is justified in using or threatening to use force, except deadly force, 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 justified in using or threatening to use ~~the use of~~ deadly force

and does not have a duty to retreat if:

(1) He or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or

(2) Under those circumstances permitted pursuant to s. 776.013.

Section 3. Subsections (1), (2), and (3) of section 776.013, Florida Statutes, are amended to read:

776.013 Home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.—

(1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person’s will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(2) The presumption set forth in subsection (1) does not 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 guardianship 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

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

(3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and use or threaten to use ~~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.

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

776.031 Use or threatened use of force in defense of property ~~others~~.—A person is justified in using or threatening to use ~~the use of~~ force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. However, a ~~the~~ person is justified in using or threatening to use ~~the use of~~ deadly force only if he or she reasonably believes that such conduct ~~force~~ is necessary to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

Section 5. Subsections (1) and (2) of section 776.032, Florida Statutes, are amended to read:

776.032 Immunity from criminal prosecution and civil action for justifiable use or threatened use of force.—

(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 in ~~using~~ such conduct ~~force~~ and is immune from criminal prosecution and civil action for the use or threatened use of such force, unless the person against whom force was used or threatened is a law enforcement officer, as defined in s.

943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful.

Section 6. Subsection (2) of section 776.041, Florida Statutes, is amended to read:

776.041 Use or threatened use of force by aggressor.—The justification described in the preceding sections of this chapter is not available to a person who:

(2) Initially provokes the use or threatened use of force against himself or herself, unless:

(a) Such force or threat of force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use or threatened use of force which is likely to cause death or great bodily harm to the assailant; or

(b) In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the

use or threatened use of force, but the assailant continues or resumes the use or threatened use of force.

Section 7. Subsection (1) of section 776.051, Florida Statutes, is amended to read:

776.051 Use or threatened use of force in resisting arrest or making an arrest or in the execution of a legal duty; prohibition.—

(1) A person is not justified in the use or threatened use of force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.

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
INTRODUCER:	Criminal Justice Committee
SUBJECT:	Criminal Justice
DATE:	February 10, 2014
REVISED:	03/03/14

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Sumner	Cannon		**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 gain-time;
- 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: 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).

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.

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

By the Committee on Criminal Justice

591-00954-14 2014592__

A bill to be entitled

An act relating to criminal justice; amending s. 944.70, F.S.; requiring the Department of Corrections to verify the authenticity of certain court orders before releasing a person from incarceration; providing an exception; providing an effective date.

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

Section 1. Subsection (3) is added to section 944.70, Florida Statutes, to read:

944.70 Conditions for release from incarceration.—

(3) If a court order has the effect of changing a person's release date to an earlier date, the department must verify the authenticity of the order with the issuing judge 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 verifying the authenticity of the order.

Section 2. This act shall take effect July 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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 182
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Stargel
SUBJECT:	Sexual Offenders
DATE:	March 3, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Favorable**
2.	Hendon	Hendon	CF	**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 offenses[3] 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]

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[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.

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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)).

[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).

[12] *Parker*, 81 So. 3d at 457.

[13] Florida Parole Commission, *Conditional Release*, https://fpc.state.fl.us/Postrelease.htm (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.[25]The 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]

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[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.

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[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).
[36] *Ashcroft 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.

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

586-01755-14 2014182c1

A bill to be entitled

An act relating to child pornography; amending s. 775.0847, F.S.; redefining the term "child pornography" and defining the term "minor"; amending s. 827.071, F.S.; defining the terms "child pornography" and "minor"; conforming cross-references; including possession of child pornography within specified criminal offenses; providing criminal penalties; amending s. 921.0022, F.S.; revising provisions of the offense severity ranking chart of the Criminal Punishment Code to conform to changes made by the act; amending ss. 947.1405 and 948.30, F.S.; prohibiting certain conditional releasees, probationers, or community controllees from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating material; providing an exception; reenacting s. 794.0115(2), F.S., relating to dangerous sexual felony offenders and mandatory sentencing thereof, to incorporate the amendment to s. 827.071, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 775.0847, Florida Statutes, is amended, present paragraphs (c) through (f) of that subsection are redesignated as paragraphs (d) through (g), respectively, and a new paragraph (c) is added to that subsection, to read:

775.0847 Possession or promotion of certain images of child pornography; reclassification.—

(1) For purposes of this section:

(b) "Child pornography" means any image depicting a minor engaged in sexual conduct or such visual depiction that has been created, adapted, or modified to appear that a minor is engaging in sexual conduct. Proof of the identity of the minor is not required in order to find a violation of this section.

(c) "Minor" means a person who had not attained the age of 18 years at the time the visual depiction was created, adapted, or modified, or whose image while he or she was a minor was used in creating, adapting, or modifying the visual depiction, and who is recognizable as an actual person by his or her facial features, likeness, or other distinguishing characteristics.

Section 2. Present paragraphs (a), (b), and (c) through (j) of subsection (1) of section 827.071, Florida Statutes, are redesignated as paragraphs (b), (c), and (e) through (l), respectively, present paragraph (j) of that subsection is amended, new paragraphs (a) and (d) are added to that subsection, and subsection (4) and paragraph (a) of subsection (5) of that section are amended, to read:

827.071 Sexual performance by a child; penalties.—

(1) As used in this section, the following definitions shall apply:

(a) "Child pornography" means a visual depiction, including, but not limited to, 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, of sexual conduct, if

the production of such visual depiction involves the use of a minor engaging in sexual conduct, or if such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexual conduct. Proof of the identity of the minor is not required in order to find a violation of this section.

(d) "Minor" has the same meaning as provided in s. 775.0847.

(l)~~(j)~~ "Simulated" means the explicit depiction of conduct set forth in paragraph (j) ~~(h)~~ which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(4) It is unlawful for any person to possess with the intent to promote any child pornography or any other photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection commits ~~is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5)(a) It is unlawful for any person to knowingly possess, control, or intentionally view child pornography or any other ~~a~~ photograph, motion picture, exhibition, show, representation, 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

separate offense. If such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes sexual conduct by more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense. A person who violates this paragraph ~~subsection~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Paragraph (e) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious

		bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.3671(2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers'

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

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

		$100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more individuals.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any child pornography or other

		photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, control, or intentionally view any <u>child pornography or other</u> photographic material, motion picture, etc., which includes sexual conduct by a child.
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.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138	3rd	Transmission of material

(2) & (3)		harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 to join a criminal gang.
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).
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

		community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
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.
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.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c),

		(2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

Section 4. Subsection (13) is added to section 947.1405, Florida Statutes, to read:

947.1405 Conditional release program.—

(13) Effective for a releasee whose crime was committed on or after October 1, 2014, in violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, in addition to any other provision of this section, the commission must impose a condition prohibiting the releasee from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program. Visual or auditory material includes, but is not limited to, telephones, electronic media, computer programs, and computer services.

Section 5. Subsection (5) is added to section 948.30, Florida Statutes, to read:

948.30 Additional terms and conditions of probation or community control for certain sex offenses.—Conditions imposed pursuant to this section do not require oral pronouncement at

the time of sentencing and shall be considered standard conditions of probation or community control for offenders specified in this section.

(5) Effective for a probationer or community controllee whose crime was committed on or after October 1, 2014, and who is placed on probation or community control for a violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, in addition to all other conditions imposed, the court must impose a condition prohibiting the probationer or community controllee from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program. Visual or auditory material includes, but is not limited to, telephones, electronic media, computer programs, and computer services.

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

794.0115 Dangerous sexual felony offender; mandatory sentencing.—

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

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

result of the commission of the offense;

(b) Used or threatened to use a deadly weapon during the commission of the offense;

(c) Victimized more than one person during the course of the criminal episode applicable to the offense;

(d) Committed the offense while under the jurisdiction of a court for a felony offense under the laws of this state, for an offense that is a felony in another jurisdiction, or for an offense that would be a felony if that offense were committed in this state; or

(e) Has previously been convicted of a violation of s. 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); s. 847.0145; of any offense under a former statutory designation which is similar in elements to an offense described in this paragraph; or of any offense that is a felony in another jurisdiction, or would be a felony if that offense were committed in this state, and which is similar in elements to an offense described in this paragraph,

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.

Section 7. 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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 188
INTRODUCER:	Education Committee and Senator Hukill and others
SUBJECT:	Education Data Privacy
DATE:	March 3, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	**Fav/CS**
2.	Erickson	Cannon	CJ	**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]

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[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 system." *Id.*

[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 universities[14] to disclose student education records[15] 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 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.

232956

LEGISLATIVE ACTION

Senate . House

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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 protected.

232956

(4) The State Board of Education may adopt rules to

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

And the title is amended as follows:

Delete line 16

and insert:

assigning student identification numbers; authorizing a school district to continue use of a palm scanner system upon approval by the Commissioner of Education; authorizing the State Board of Education to adopt rules; amending s.

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

581-01636-14 2014188c1

A bill to be entitled

An act relating to education data privacy; amending s. 1002.22, F.S.; providing for annual notice to K-12 students and parents of rights relating to education records; revising provisions relating to remedy in circuit court with respect to education records and reports of students and parents; creating s. 1002.222, F.S.; providing limitations on the collection of information and the disclosure of confidential and exempt student records; defining the term "biometric information"; authorizing fees; amending s. 1008.386, F.S.; 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; amending s. 1011.622, F.S.; conforming provisions; providing an effective date.

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

Section 1. Paragraph (e) of subsection (2) and subsection (4) of section 1002.22, Florida Statutes, are amended to read:

1002.22 Education records and reports of K-12 students; rights of parents and students; notification; penalty.—

(2) RIGHTS OF STUDENTS AND PARENTS.—The rights of students and their parents with respect to education records created, maintained, or used by public educational institutions and agencies shall be protected in accordance with the Family

Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, the implementing regulations issued pursuant thereto, and this section. In order to maintain the eligibility of public educational institutions and agencies to receive federal funds and participate in federal programs, the State Board of Education shall comply with the FERPA after the board has evaluated and determined that the FERPA is consistent with the following principles:

(e) Students and their parents shall receive annual notice of their rights with respect to education records.

(4) PENALTY.—If any official or employee of an institution refuses to comply with this section, the aggrieved parent or student has an immediate right to bring an action in circuit court to enforce his or her rights by injunction. Any aggrieved parent or student who receives injunctive relief ~~brings such action and whose rights are vindicated~~ may be awarded attorney ~~attorney's~~ fees and court costs.

Section 2. Section 1002.222, Florida Statutes, is created to read:

1002.222 Limitations on collection of information and disclosure of confidential and exempt student records.—

(1) An agency or institution as defined in s. 1002.22(1) may not:

(a) Collect, obtain, or retain information on the political affiliation, voting history, religious affiliation, or biometric information of a student or a parent or sibling of the student. For purposes of this subsection, the term "biometric information" means information collected from the electronic measurement or evaluation of any physical or behavioral

characteristics that are attributable to a single person, including fingerprint characteristics, hand characteristics, eye characteristics, vocal characteristics, and any other physical characteristics used for the purpose of electronically identifying that person with a high degree of certainty. Examples of biometric information include, but are not limited to, a fingerprint or hand scan, a retina or iris scan, a voice print, or a facial geometry scan.

(b) Provide education records made confidential and exempt by s. 1002.221 or federal law to:

1. A person as defined in s. 1.01(3) except when authorized by s. 1002.221 or in response to a lawfully issued subpoena or court order;

2. A public body, body politic, or political subdivision as defined in s. 1.01(8) except when authorized by s. 1002.221 or in response to a lawfully issued subpoena or court order; or

3. An agency of the Federal Government except when authorized by s. 1002.221, required by federal law, or in response to a lawfully issued subpoena or court order.

(2) The governing board of an agency or institution may only designate information as directory information in accordance with 20 U.S.C. s. 1232g and applicable federal regulations. Such designation must occur at a regularly scheduled meeting of the governing board. The governing board of an agency or institution must consider whether designation of such information would put students at risk of becoming targets of marketing campaigns, the media, or criminal acts. An agency or institution may charge fees for copies of designated directory information as provided in s. 119.07(4).

Section 3. Section 1008.386, Florida Statutes, is amended to read:

1008.386 Florida ~~Social security numbers used as~~ student identification numbers.—

(1) When a student enrolls in a public school in this state, the ~~Each~~ district school board shall request that the ~~each~~ student ~~enrolled in a public school in this state~~ provide his or her social security number and shall indicate whether the student identification number assigned to the student is a social security number. A student satisfies this requirement by presenting his or her social security card or a copy of the card to a school enrollment official. ~~Each school district shall use social security numbers as student identification numbers in the management information system maintained by the school district.~~ However, a student is not required to provide his or her social security number as a condition for enrollment or graduation. ~~A student satisfies this requirement by presenting to school enrollment officials his or her social security card or a copy of the card. The school district shall include the social security number in the student's permanent records and shall indicate if the student identification number is not a social security number.~~ The Commissioner of Education shall assist ~~provide assistance to~~ school districts with ~~to assure that~~ the assignment of student identification numbers ~~other than social security numbers is kept to a minimum and~~ to avoid duplication of any student identification number.

(2) The department shall establish a process for assigning a Florida student identification number to each student in the state, at which time a school district may not use social

security numbers as student identification numbers in its management information systems.

(3) The State Board of Education may adopt rules to implement this section.

Section 4. Section 1011.622, Florida Statutes, is amended to read:

1011.622 Adjustments for students without a Florida ~~common~~ student identification number ~~identifier~~.—The Florida Education Finance Program funding calculations, including the calculations authorized in ss. 1011.62, 1011.67, 1011.68, and 1011.685, shall include funding for a student only when all of the student's records are reported to the Department of Education under a Florida ~~common~~ student identification number ~~identifier~~. The State Board of Education may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 5. 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:	CS/SB 532
INTRODUCER:	Criminal Justice Committee and Senator Simmons
SUBJECT:	Disclosure of Sexually Explicit Images
DATE:	March 3, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	**Fav/CS**
2.	Brown	Cibula	JU	**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 disclosure[4] 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]

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[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.*

[6] CAL PENAL CODE § 647 (4)(A)-(C).

[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 image[9] of an identifiable person[10] 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 no-contact 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.

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.

LEGISLATIVE ACTION

Senate . House

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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;

(b) Other related telecommunications or commercial mobile radio service; or

(c) Content provided by another person.

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

And the title is amended as follows:

Delete line 16

and insert:

a violation of s. 847.0136, F.S.; providing applicability; providing an

By the Committee on Criminal Justice; and Senator Simmons

591-01846-14 2014532c1

A bill to be entitled

An act relating to the disclosure of sexually explicit images; creating s. 847.0136, F.S.; providing definitions; 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; providing criminal penalties; providing for jurisdiction; providing exceptions; amending s. 921.244, F.S.; 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 s. 847.0136, F.S.; providing an effective date.

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

Section 1. Section 847.0136, Florida Statutes, is created to read:

847.0136 Prohibited electronic disclosure of sexually explicit images; penalties; jurisdiction.—

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

(a) "Disclose" means to publish, post, distribute, exhibit, advertise, offer, or transfer, or cause to be published, posted, distributed, exhibited, advertised, offered, or transferred.

(b) "Harass" means to engage in conduct directed at a

specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

(c) "Identifiable person" means an individual in a sexually explicit image who can be identified through:

1. Visual recognition of any part of his or her body depicted in the sexually explicit image; or

2. Identifying information as defined in s. 397.311 which accompanies or is associated with the sexually explicit image.

(d) "Sexually explicit image" means a private photograph, film, videotape, recording, or other reproduction of:

1. Nudity; or

2. Sexual intercourse, including, but not limited to, oral sexual intercourse or anal sexual intercourse.

(2) An individual may not intentionally and knowingly disclose a sexually explicit image of an identifiable person to a social networking service or a website, or by means of any other electronic medium, with the intent to harass such person, if the individual knows or should have known that the person depicted in the sexually explicit image did not consent to such disclosure.

(3)(a) Except as provided in paragraph (b), an individual who violates this section commits a second degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083.

(b) An individual who is 18 years of age or older at the time he or she violates this section commits a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, if the violation involves a sexually explicit image of an individual who was younger than 16 years of age at the time the sexually explicit image was created.

(4) A violation of this section is committed within this state if any conduct that is an element of the offense described in subsection (2), or any harm to the identifiable person resulting from the offense described in subsection (2), occurs within this state.

(5) This section does not apply to the disclosure of a sexually explicit image for:

(a) The reporting, investigation, and prosecution of an alleged crime for law enforcement purposes.

(b) Voluntary and consensual purposes in public or commercial settings.

Section 2. Section 921.244, Florida Statutes, is amended to read:

921.244 Order of no contact; penalties.—

(1) At the time of sentencing an offender convicted of a violation of s. 794.011, s. 800.04, s. 847.0135(5), s. 847.0136, or any offense in s. 775.084(1)(b)1.a.-o., the court shall order that the offender be prohibited from having any contact with the victim, directly or indirectly, including through a third person, for the duration of the sentence imposed. The court may reconsider the order upon the request of the victim if the request is made at any time after the victim has attained 18 years of age. In considering the request, the court shall conduct an evidentiary hearing to determine whether a change of circumstances has occurred which warrants a change in the court order prohibiting contact and whether it is in the best interest of the victim that the court order be modified or rescinded.

(2) An ~~Any~~ offender who violates a court order issued under this section commits a felony of the third degree, punishable as

provided in s. 775.082, s. 775.083, or s. 775.084.

(3) The punishment imposed under this section shall run consecutive to any former sentence imposed for a conviction for any offense under s. 794.011, s. 800.04, s. 847.0135(5), s. 847.0136, or any offense in s. 775.084(1)(b)1.a.-o.

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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 634
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Brandes
SUBJECT:	Guardianship
DATE:	March 3, 2014 REVISED:

	ANALYST	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 person is 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

[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.
[9] Section 744.331(3), F.S.
[10] Section 744.331(4), F.S.
[11] *See* s. 744.331(6)(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; or[17]

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 screening[20], 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.

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[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.
[19] Section 744.3135(4)(a), 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: https://www.fdle.state.fl.us/Content/getdoc/941d4e90-131a-45ef-8af3-3c9d4efefd8e/Livescan-Service-Providers-and-Device-Vendors.aspx#Service_Providers (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.

640150

LEGISLATIVE ACTION

Senate . House

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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


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appointment by the court, other than a corporate guardian as described in s. 744.309(4) ~~may require a nonprofessional guardian and shall require a professional or public guardian~~, and all employees of a professional guardian, other than a corporate guardian as described in s. 744.309(4), who have a fiduciary responsibility to a ward, to submit, at their own expense, to a ~~an investigation of the guardian's~~ credit history investigation and to undergo level 2 background screening as required under s. 435.04. If appointed, a nonprofessional guardian may petition the court for reimbursement of the reasonable expenses of the credit history investigation and background screening. ~~If a credit or criminal history record check is required,~~ The court must consider the results of any investigation before appointing a guardian. At any time, the court may require a guardian or the guardian's employees to submit to an investigation of the person's credit history and complete a level 1 background screening pursuant to ~~as set forth in~~ s. 435.03. The court shall consider the results of any investigation in determining whether to reappoint ~~when reappointing~~ a guardian. The clerk of the court shall maintain a file on each guardian appointed by the court and retain in the file documentation of the result of any investigation conducted under this section. A professional guardian shall ~~must~~ pay the clerk of the court a fee of up to $7.50 for handling and processing professional guardian files.

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

744.368 Responsibilities of the clerk of the circuit court.—

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(5) If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably relate to the guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship.

(6) If a guardian fails to produce records or documents to the clerk upon request, the clerk may request the court to enter an order pursuant to s. 744.3685(2) by filing an affidavit that identifies the records or documents requested and shows good cause as to why the records or documents requested should be produced.

(7) Upon application to the court supported by an affidavit pursuant to subsection (6), the clerk may issue subpoenas to nonparties to compel production of records or documents. Before issuance of a subpoena by affidavit, the clerk must serve notice on the guardian and the ward, unless the ward is a minor or totally incapacitated, of the intent to serve subpoenas to nonparties.

(a) The clerk must attach the affidavit and the proposed subpoena to the notice to the guardian and, if appropriate, to the ward. The notice must:

1. State the time, place, and method for production of the records or documents, and the name and address of the person who is to produce the documents or items, if known, or if not known, a general description sufficient to identify the person or the particular class or group to which the person belongs;

2. Include a designation of the records or documents to be produced; and

3. State that the person who will be asked to produce the

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records or documents has the right to object to the production under this section and that the person is not required to surrender the records or documents.

(b) A copy of the notice and proposed subpoena may not be furnished to the person upon whom the subpoena is to be served.

(c) If the guardian or ward serves an objection to production under this subsection within 10 days after service of the notice, the records or documents may not be required to be produced until resolution of the objection. If an objection is not made within 10 days after service of the notice, the clerk may issue the subpoena to the nonparty. The court may shorten the period within which a guardian or ward must file an objection if the clerk's affidavit shows that the ward's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.

Section 4. Section 744.3685, Florida Statutes, is amended to read:

744.3685 Order requiring guardianship report; contempt.—

(1) If ~~When~~ a guardian fails to file the guardianship report, the court shall order the guardian to file the report within 15 days after the service of the order upon her or him or show cause why she or he may ~~should~~ not be compelled to do so.

(2) If a guardian fails to comply with the submission of records or documents requested by the clerk during the audit, upon a showing of good cause by affidavit of the clerk which shows the reasons the records must be produced, the court may order the guardian to produce the records or documents within a period specified by the court unless the guardian shows good cause as to why the guardian may not be compelled to do so

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before the deadline specified by the court. The affidavit of the clerk shall be served with the order.

(3) A copy of an ~~the~~ order entered pursuant to subsection (1) or subsection (2) shall be served on the guardian or on the guardian's resident agent. If the guardian fails to comply with the order ~~file her or his report~~ within the time specified by the order without good cause, the court may cite the guardian for contempt of court and may fine her or him. The fine may not be paid out of the ward's property.

Section 5. Subsection (21) is added to section 744.474, Florida Statutes, to read:

744.474 Reasons for removal of guardian.—A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law:

(21) The failure in bad faith to submit guardianship records

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

And the title is amended as follows:

Delete line 12

and insert:

records and documents relating to guardianship assets and to issue

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

586-01758-14 2014634c1

A bill to be entitled

An act relating to guardianship; amending s. 744.102, F.S.; redefining the term "audit"; amending s. 744.3135, F.S.; revising the requirements and authorizations of the court to require specified guardians to submit to a credit history investigation and background screening; authorizing a nonprofessional guardian to petition the court for reimbursement for the credit history investigation and background screening; amending s. 744.368, F.S.; 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 requirements for affidavits, notice, and subpoenas; providing for objection to a subpoena; amending s. 744.3685, F.S.; authorizing the court to require the production of records and documents by a guardian who fails to submit them during an audit; amending s. 744.474, F.S.; providing for the removal of a guardian for a bad faith failure to submit records during an audit; amending ss. 943.0585 and 943.059, F.S.; providing that a person seeking an appointment as guardian may not lawfully deny or fail to acknowledge the arrests covered by an expunged or sealed record; reenacting s. 943.0585(4)(c), F.S., relating to court-ordered expunction of criminal history records, to incorporate the amendments made to s. 943.0585, F.S., in a reference thereto; reenacting s. 943.059(4)(c), relating to court-ordered sealing of

criminal history records, to incorporate the amendments made to s. 943.059, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (2) of section 744.102, Florida Statutes, is amended to read:

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

(2) "Audit" means a systematic review of financial and all other documents to ensure compliance with s. 744.368, rules of court, and local procedures using generally accepted accounting principles. The term includes various practices that meet professional 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 guardians who are seeking appointment by the court, other than a corporate guardian as described in s. 744.309(4) ~~may require a nonprofessional guardian and shall require a professional or public guardian~~, and all employees of a professional guardian, other than a corporate guardian as described in s. 744.309(4), who have a fiduciary responsibility to a ward, to submit, at their own expense, to a ~~an investigation of the guardian's~~ credit history investigation and to undergo level 2 background screening as required under s. 435.04. If appointed, a nonprofessional

guardian may petition the court for reimbursement of the reasonable expenses of the credit history investigation and background screening. ~~If a credit or criminal history record check is required,~~ The court must consider the results of any investigation before appointing a guardian. At any time, the court may require a guardian or the guardian's employees to submit to an investigation of the person's credit history and complete a level 1 background screening pursuant to ~~as set forth in~~ s. 435.03. The court shall consider the results of any investigation in determining whether to reappoint ~~when reappointing~~ a guardian. The clerk of the court shall maintain a file on each guardian appointed by the court and retain in the file documentation of the result of any investigation conducted under this section. A professional guardian shall ~~must~~ pay the clerk of the court a fee of up to $7.50 for handling and processing professional guardian files.

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

744.368 Responsibilities of the clerk of the circuit court.—

(5) If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship.

(6) If a guardian fails to produce records and documents to the clerk upon request, the clerk may request the court to enter an order pursuant to s. 744.3685(2) by filing an affidavit that identifies the records and documents requested and shows good

cause as to why the documents and records requested are needed to complete the audit.

(7) Upon application to the court supported by an affidavit pursuant to subsection (6), the clerk may issue subpoenas to nonparties to compel production of books, papers, and other documentary evidence. Before issuance of a subpoena by affidavit, the clerk must serve notice on the guardian and the ward, unless the ward is a minor or totally incapacitated, of the intent to serve subpoenas to nonparties.

(a) The clerk must attach the affidavit and the proposed subpoena to the notice to the guardian and, if appropriate, to the ward, and must:

1. State the time, place, and method for production of the 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, a general description sufficient to identify the person or the particular class or group to which the person belongs;

2. Include a designation of the items to be produced; and

3. State that the person who will be asked to produce the documents or items has the right to object to the production under this section and that the person is not required to surrender the documents or items.

(b) A copy of the notice and proposed subpoena may not be furnished to the person upon whom the subpoena is to be served.

(c) If the guardian or ward serves an objection to production under this subsection within 10 days after service of the notice, the documents or items may not be required to be produced until resolution of the objection. If an objection is not made within 10 days after service of the notice, the clerk

may issue the subpoena to the nonparty. The court may shorten the period within which a guardian or ward is required to file an objection upon a showing by the clerk by affidavit that the ward's property is in imminent danger of being wasted, misappropriated, or lost unless immediate action is taken.

Section 4. Section 744.3685, Florida Statutes, is amended to read:

744.3685 Order requiring guardianship report; contempt.—

(1) If ~~When~~ a guardian fails to file the guardianship report, the court shall order the guardian to file the report within 15 days after the service of the order upon her or him or show cause why she or he may ~~should~~ not be compelled to do so.

(2) If a guardian fails to comply with the submission of records and documents requested by the clerk during the audit, upon a showing of good cause by affidavit of the clerk which shows the reasons the records must be produced, the court may order the guardian to produce the records and documents within a period specified by the court unless the guardian shows good cause as to why the guardian may not be compelled to do so before the deadline specified by the court. The affidavit of the clerk shall be served with the order.

(3) A copy of an ~~the~~ order entered pursuant to subsection (1) or subsection (2) shall be served on the guardian or on the guardian's resident agent. If the guardian fails to comply with the order ~~file her or his report~~ within the time specified by the order without good cause, the court may cite the guardian for contempt of court and may fine her or him. The fine may not be paid out of the ward's property.

Section 5. Subsection (21) is added to section 744.474,

Florida Statutes, to read:

744.474 Reasons for removal of guardian.—A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law:

(21) A bad faith failure to submit guardianship records during the audit pursuant to s. 744.368.

Section 6. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended, and paragraph (c) of that subsection is reenacted, to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to

whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the

sole discretion of the court.

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

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

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

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.059;

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

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education,

the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly; ~~or~~

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

7. Is seeking to be appointed as a guardian pursuant to s. 744.3125.

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., 6., and 7. for their respective licensing, access authorization, and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates

or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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 until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may

not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is

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

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

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

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.0585;

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

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile

Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

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

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

8. Is seeking to be appointed as a guardian pursuant to s. 744.3125.

(c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal history record to the entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)8. to disclose information relating to the existence of a sealed criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct

responsibility for employment, access authorization, or licensure decisions. Any person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 8. This act shall take effect July 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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 260
INTRODUCER:	Senator Latvala
SUBJECT:	Unaccompanied Youth
DATE:	March 3, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	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 vote[2] 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 purposes[11] 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]

[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.
[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.

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.

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[17] Ann Bittinger, *Legal Hurdles to Leap to Get Medical Treatment for Children*, 80 FLA. B.J. 24, 27 (Jan. 2006).
[18] Florida Council on Homelessness, *Council on Homelessness: 2013 Report*, www.myflfamilies.com/service-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.
[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 law[22] 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:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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:

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(a) Found by a school district's liaison for homeless children and youths to be an unaccompanied homeless youth eligible for services pursuant to the McKinney-Vento Homeless Assistance Act, 42 U.S.C. ss. 11431-11435; or

(b) Believed to qualify as an unaccompanied homeless youth, as that term is defined in the McKinney-Vento Homeless Assistance Act, by:

1. The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director's designee;

2. The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director's designee;

3. A clinical social worker licensed under chapter 491; or

4. A court.

(2) A minor who qualifies as an unaccompanied homeless youth shall be given a written certificate on agency letterhead, citing to this section, of his or her status as an unaccompanied homeless youth. A health care provider may accept the written certificate under this subsection and may keep a copy of the certificate in the medical file.

(3) An unaccompanied homeless youth may:

(a) Petition the circuit court to have the disabilities of nonage removed under s. 743.015. The youth shall qualify as a person not required to prepay costs and fees as provided in s. 57.081. The court shall advance the cause on the calendar.

(b) Consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including

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preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397 and any forensic medical examination for the purpose of investigating any felony offense under chapter 784, chapter 787, chapter 794, chapter 800, or chapter 827, for:

1. Himself or herself; or

2. His or her child, if the unaccompanied homeless youth is unmarried, is the parent of the child, and has actual custody of the child.

(4) This section does not affect the requirements of s. 390.01114.

Section 2. This act shall take effect July 1, 2014.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to unaccompanied homeless youth; amending s. 743.067, F.S.; defining the term "unaccompanied homeless youth"; providing for a certification; authorizing certain unaccompanied homeless youths to consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, and forensic medical examinations 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; providing an effective date.

By Senator Latvala

20-00258A-14 2014260__

A bill to be entitled

An act relating to unaccompanied youth; amending s. 743.067, F.S.; 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; providing an effective date.

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

Section 1. Section 743.067, Florida Statutes, is amended to read:

743.067 Unaccompanied youths.—

(1) An unaccompanied youth, 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 may:

(a) Petition the circuit court to have the disabilities of nonage removed under s. 743.015. The youth shall qualify as a person not required to prepay costs and fees as provided in s. 57.081. The court shall advance the cause on the calendar.

(b) Consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397, for:

1. Himself or herself; or

2. His or her child, if the unaccompanied youth is unmarried, is the parent of the child, and has actual custody of

the child.

(2) This section does not affect the requirements of s. 390.01114.

Section 2. This act shall take effect July 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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 700
INTRODUCER:	Senators Bradley and Detert
SUBJECT:	Department of Juvenile Justice
DATE:	March 3, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Favorable**
2.	Brown	Cibula	JU	**Pre-meeting**
3.			ACJ	
4.			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*, http://www.djj.state.fl.us/about-us/history (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 sanction[13] or order the placement of the child into a secure facility[14] 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 Center[18] 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]

[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.
[16] Section 985.037(4), F.S.
[17] A referral is similar to an arrest in the adult criminal justice system.
[18] Section 985.135(4), F.S.
[19] Section 985.14(2), 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.
[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

and home detention[25] when specific statutory criteria are met.

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 detention[31]).[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]

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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 defendants[35] 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 pre-disposition report[38] 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.

- 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.

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[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, http://www.djj.state.fl.us/research/reports/car (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-to-adulthood" 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.

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[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 personnel[65] 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.

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[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?*, http://www.medicare.gov/sign-up-change-plans/decide-how-to-get-medicare/whats-medicare/what-is-medicare.html (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

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

[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.

[85] Section 985.605(1), F.S.

[86] Section 985.605(2)(a), F.S.

[87] Section 985.605(2)(c), F.S.

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*, www.dcjs.virginia.gov/juvenile/compliance; *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 community-based 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 youth[99] 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*, http://www.djj.state.fl.us/research/reports/car (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, 985.255, 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.

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LEGISLATIVE ACTION

Senate . House

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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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~~(a) Running away from parents or legal custodians;~~

~~(b) Persistently disobeying reasonable and lawful demands of parents or legal custodians, and being beyond their control; or~~

~~(c) Habitual truancy from school.~~

~~(24) "Foster care" means care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.~~

~~(25) "Habitually truant" means that:~~

~~(a) The child has 15 unexcused absences within 90 calendar days with or without the knowledge or justifiable consent of the child's parent or legal guardian, is subject to compulsory school attendance under s. 1003.21(1) and (2)(a), and is not exempt under s. 1003.21(3), s. 1003.24, or any other exemptions specified by law or the rules of the State Board of Education.~~

~~(b) Escalating activities to determine the cause, and to attempt the remediation, of the child's truant behavior under ss. 1003.26 and 1003.27 have been completed.~~

~~If a child who is subject to compulsory school attendance is responsive to the interventions described in ss. 1003.26 and 1003.27 and has completed the necessary requirements to pass the current grade as indicated in the district pupil progression plan, the child shall not be determined to be habitually truant and shall be passed. If a child within the compulsory school attendance age has 15 unexcused absences within 90 calendar days or fails to enroll in school, the state attorney may file a child-in-need-of-services petition. Before filing a petition, the child must be referred to the appropriate agency for~~


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

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

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

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

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


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screening by the department or juvenile assessment center personnel of a complaint or a law enforcement report or probable cause affidavit of delinquency~~, family in need of services, or child in need of services~~ to determine the recommendation to be taken in the best interests of the child, the family, and the community. The emphasis of intake is on diversion and the least restrictive available services and~~. Consequently, intake~~ 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 department ~~juvenile probation officer~~ of judicial handling, if ~~when~~ appropriate and warranted.

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

(26)~~(29)~~ "Juvenile justice continuum" includes, but is not limited to, ~~delinquency~~ prevention programs and services designed for the purpose of preventing or reducing delinquent acts, including criminal activity by criminal gangs, and juvenile arrests, as well as programs and services targeted at children who have committed delinquent acts~~,~~ and ~~children~~ who have previously been committed to residential treatment programs for delinquents. The term includes children-in-need-of-services and families-in-need-of-services programs under chapter 984; conditional release; substance abuse and mental health programs; educational and career programs; recreational programs; community services programs; community service work programs;


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

(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 Families ~~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.

(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.

(34)~~(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 mother-infant program facility must be licensed as a child care facility under s. 402.308 and must provide the services and support necessary to enable each juvenile mother committed to the facility to provide for the needs of her infant ~~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.

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

(38)~~(41)~~ "Parent" means a woman who gives birth to a child and a man whose consent to the adoption of the child would be 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 terminated~~,~~ or an alleged or prospective parent~~,~~ unless the parental status falls within the terms of ~~either~~ s. 39.503(1) or s. 63.062(1).

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

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

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

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

(42)~~(45)~~ "Relative" means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by ~~the~~ whole or half blood, by affinity, or by adoption. The term does not include a stepparent.

(43)~~(46)~~ "Restrictiveness level" means the level of programming and security provided by programs that service the


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

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

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


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

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

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

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

(d) ~~(c)~~ Maximum-risk residential.—Programs or program models at this commitment level include juvenile correctional facilities and juvenile prisons. The programs at this commitment level 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 maximum-custody and hardware secure~~, hardware-secure~~ with perimeter security fencing and locking doors. Residential facilities at this commitment level may ~~shall~~ have up to 90 ~~no more than 165~~ beds each, including campus-style programs, unless those campus-style programs include more than one ~~level of restrictiveness, provide multilevel education and~~ treatment program ~~programs~~ using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of residents. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself, ~~or~~ herself, or others. Mechanical restraint may also be used when necessary. Facilities at this commitment level ~~The facility~~ shall provide for single cell occupancy, except that youth may be housed together during prerelease transition. Youth assessed and classified for this level of placement require close supervision in a maximum security residential setting. Placement in a program at this level is prompted by a demonstrated need to protect the public.

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

(45) ~~(48)~~ "Secure detention center or facility" means a physically restricting facility for the temporary care of children, pending adjudication, disposition, or placement.

(46) ~~(49)~~ "Shelter" means a place for the temporary care of a child who is alleged to be or who has been found to be delinquent.

~~(50) "Shelter hearing" means a hearing provided for under s. 984.14 in family-in-need-of-services cases or child-in-need-of-services cases.~~

~~(51) "Staff-secure shelter" means a facility in which a child is supervised 24 hours a day by staff members who are awake while on duty. The facility is for the temporary care and assessment of a child who has been found to be dependent, who has violated a court order and been found in contempt of court, or whom the Department of Children and Family Services is unable to properly assess or place for assistance within the continuum of services provided for dependent children.~~

(47) ~~(52)~~ "Substance abuse" means using, without medical reason, any psychoactive or mood-altering drug, including alcohol, in such a manner as to induce impairment resulting in dysfunctional social behavior.

(48) ~~(53)~~ "Taken into custody" means the status of a child immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release, detention, placement, or other disposition as authorized by law.

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

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

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

(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.

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


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(c) Services that have proven effective toward achieving the transition to adulthood.

(52) "Trauma-informed care" means the provision of services 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 delinquency shall be filed in the county where the delinquent act or violation of law occurred.~~,~~ ~~but~~ The circuit court for that county may transfer the case to the circuit court of the circuit in which the child resides or will reside at the time of detention or placement for dispositional purposes. A child who has been detained may ~~shall~~ be transferred to the ~~appropriate~~ detention center or facility in the circuit in which the child resides or will reside at the time of detention ~~or other placement directed by the receiving court~~.

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

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

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

(b) Unless relinquished by its own order, the court retains jurisdiction over a child on probation until the child reaches 19 years of age ~~Notwithstanding ss. 743.07 and 985.455(3), the~~


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

(c) 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.~~

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

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

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

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

~~(g) 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.~~

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


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

(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, Florida Statutes, are amended to read:

985.037 Punishment for contempt of court; alternative sanctions.—

(2) PLACEMENT IN A SECURE DETENTION FACILITY.—A child may be placed in a secure detention facility for purposes of punishment for contempt of court if alternative sanctions are unavailable or inappropriate~~,~~ or if the child has already been ordered to serve an alternative sanction but failed to comply with the sanction. A delinquent child who has been held in direct or indirect contempt may be placed in a secure detention facility for up to ~~not to exceed~~ 5 days for a first offense and up to ~~not to exceed~~ 15 days for a second or subsequent offense.

(4) CONTEMPT OF COURT SANCTIONS; PROCEDURE AND DUE PROCESS.—

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


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including traffic court, the court may impose an authorized sanction immediately. The court must hold a hearing to determine if the child committed direct contempt. Due process must be afforded to the child during such hearing.

(b) If a child is charged with indirect contempt of court, the court must hold a hearing within 24 hours to determine whether the child committed indirect contempt of a valid court order. At the hearing, the following due process rights must be provided to the child:

1. Right to a copy of the order to show cause alleging facts supporting the contempt charge.

2. Right to an explanation of the nature and the consequences of the proceedings.

3. Right to legal counsel and the right to have legal counsel appointed by the court if the juvenile is indigent, under s. 985.033.

4. Right to confront witnesses.

5. Right to present witnesses.

6. Right to have a transcript or record of the proceeding.

7. Right to appeal to an appropriate court.

The child's parent or guardian may address the court regarding the due process rights of the child. Upon motion by the defense or state attorney, the court shall review the placement of the child ~~every 72 hours~~ to determine whether it is appropriate for the child to remain in the facility.

(c) The court may not order that a child be placed in a secure detention facility as ~~for~~ punishment for contempt unless the court determines that an alternative sanction is


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

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

Section 6. Section 985.105, Florida Statutes, is repealed.

Section 7. Subsection (1) of section 985.11, Florida Statutes, is amended to read:

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 shall ~~must~~ be


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submitted to the Department of Law Enforcement as provided in s. 943.051(3)(a).

(b) Unless the child is issued a civil citation or participating in a similar diversion program pursuant to s. 985.12, a child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014.

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, resulting in bodily harm to a firefighter, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child

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

(c) The court is ~~shall be~~ responsible for the fingerprinting of a ~~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.

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

985.14 Intake and case management system.—

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

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

985.145 Responsibilities of the department ~~juvenile probation officer~~ during intake; screenings and assessments.—

(1) The department ~~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

Families ~~Family Services~~ shall cooperate with the primary case manager in carrying out the duties and responsibilities described in this section. In addition to duties specified in other sections and through departmental rules, the department ~~assigned juvenile probation officer~~ shall be responsible for the following:

(a) *Reviewing probable cause affidavit.*—The department ~~juvenile probation officer~~ shall make a preliminary determination as to whether the report, affidavit, or complaint is complete, consulting with the state attorney as ~~may be~~ necessary. A report, affidavit, or complaint alleging that a child has committed a delinquent act or violation of law shall be made to the intake office operating in the county in which the child is found or in which the delinquent act or violation of law occurred. Any person or agency having knowledge of the facts may make such a written report, affidavit, or complaint and shall furnish to the intake office facts sufficient to establish the jurisdiction of the court and to support a finding by the court that the child has committed a delinquent act or violation of law.

(b) *Notification concerning apparent insufficiencies in probable cause affidavit.*—In any case where the department ~~juvenile probation officer~~ or the state attorney finds that the report, affidavit, or complaint is insufficient by the standards for a probable cause affidavit, the department ~~juvenile probation officer~~ or state attorney shall return the report, affidavit, or complaint, without delay, to the person or agency originating the report, affidavit, or complaint or having knowledge of the facts or to the appropriate law enforcement


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agency having investigative jurisdiction of the offense, and shall request, and the person or agency shall promptly furnish, additional information in order to comply with the standards for 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 program, including, but not limited to, a teen court program; referral for community arbitration; or referral to some other program or agency for the purpose of nonofficial or nonjudicial 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.

(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 department ~~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 department ~~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. If ~~When~~ sufficient evidence exists to warrant a comprehensive assessment and the child fails to voluntarily participate in the assessment efforts, the department ~~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

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abuse problems.

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 department ~~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.

(i) *Recommendation concerning a petition.*—Upon determining that the report, affidavit, or complaint complies with the standards of a probable cause affidavit and that the interests of the child and the public will be best served, the department ~~juvenile probation officer~~ may recommend that a delinquency petition not be filed. If such a recommendation is made, the department ~~juvenile probation officer~~ shall advise in writing the person or agency making the report, affidavit, or complaint, the victim, if any, and the law enforcement agency having investigative jurisdiction over the offense of the recommendation; the reasons therefor; and that the person or agency may submit, within 10 days after the receipt of such notice, the report, affidavit, or complaint to the state attorney for special review. The state attorney, upon receiving a request for special review, shall consider the facts presented by the report, affidavit, or complaint~~,~~ and by the department


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

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

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


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

(3) If ~~When~~ indicated by the comprehensive assessment, the department is authorized to contract within appropriated funds for services with a local nonprofit community mental health or substance abuse agency licensed or authorized under chapter 394 or chapter 397 or other authorized nonprofit social service agency providing related services. The determination of mental health or substance abuse services shall be conducted in coordination with existing programs providing mental health or 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 department ~~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 before ~~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.

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

(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).

Section 10. Section 985.17, Florida Statutes, is created to read:

985.17 Prevention services.—

(1) Prevention services decrease recidivism by addressing the needs of at-risk youth and their families, preventing further involvement in the juvenile justice system, protecting public safety, and facilitating successful reentry into the community. To assist in decreasing recidivism, the department's prevention services should strengthen protective factors, reduce risk factors, and use tested and effective approaches.

(2) A primary focus of the department's prevention services is to develop capacity for local communities to serve their youth.

(a) The department shall engage faith-based and community-based organizations to provide a full range of voluntary programs and services to prevent and reduce juvenile delinquency, including, but not limited to, chaplaincy services, crisis intervention counseling, mentoring, and tutoring.

(b) The department shall establish volunteer coordinators in each circuit and encourage the recruitment of volunteers to serve as mentors for youth in department services.

(c) The department shall promote the Invest In Children license plate developed pursuant to s. 320.08058(11) to help fund programs and services to prevent juvenile delinquency. The department shall allocate moneys for programs and services within each county based on that county's proportionate share of


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the license plate annual use fee collected by the county pursuant to s. 320.08058(11).

(3) The department's prevention services for youth at risk of becoming delinquent should focus on preventing initial or further involvement in the juvenile justice system by including services such as literacy services, gender-specific programming, and recreational and after-school services and should include targeted services to troubled, truant, ungovernable, abused, trafficked, or runaway youth. To decrease the likelihood that a youth will commit a delinquent act, the department may provide specialized services addressing the strengthening of families, job training, and substance abuse.

(4) In an effort to decrease the prevalence of disproportionate minority representation in the juvenile justice system, the department's prevention services should address the multiple needs of minority youth at risk of becoming delinquent.

(5) The department shall expend funds related to prevention services in a manner consistent with the policies expressed in ss. 984.02 and 985.01. The department shall expend such funds in a manner that maximizes accountability to the public and ensures the documentation of outcomes.

(a) As a condition of the receipt of state funds, entities that receive or use state moneys to fund prevention services through contracts with the department or grants from any entity dispersed by the department shall:

1. Design the programs providing such services to further one or more of the following strategies:

a. Encouraging youth to attend and succeed in school, which may include special assistance and tutoring to address

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deficiencies in academic performance and collecting outcome data to reveal the number of days youth attended school while participating in the program.

b. Engaging youth in productive and wholesome activities during nonschool hours which build positive character, instill positive values, and enhance educational experiences.

c. Encouraging youth to avoid the use of violence.

d. Assisting youth in acquiring the skills needed to find meaningful employment, which may include assistance in finding a suitable employer for the youth.

2. Provide the department with demographic information, dates of services, and the type of interventions received by each youth.

(b) The department shall monitor output and outcome measures for each program strategy in paragraph (a) and include them in the annual Comprehensive Accountability Report published pursuant to s. 985.632.

(c) The department shall monitor all programs that receive or use state moneys to fund juvenile delinquency prevention services through contracts or grants with the department for compliance with all provisions in the contracts or grants.

Section 11. Section 985.24, Florida Statutes, is amended to read:

985.24 Use of detention; prohibitions.—

(1) All determinations and court orders regarding the use of ~~secure, nonsecure, or home~~ detention care must ~~shall~~ be based primarily upon findings that the child:

(a) Presents a substantial risk of not appearing at a subsequent hearing;


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(b) Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including the illegal possession of a firearm;

(c) Presents a history of committing a property offense before ~~prior to~~ adjudication, disposition, or placement;

(d) Has committed contempt of court by:

1. Intentionally disrupting the administration of the court;

2. Intentionally disobeying a court order; or

3. Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or

(e) Requests protection from imminent bodily harm.

(2) A child alleged to have committed a delinquent act or violation of law may not be placed into secure or~~,~~ nonsecure~~, or home~~ detention care for any of the following reasons:

(a) To allow a parent to avoid his or her legal responsibility.

(b) To permit more convenient administrative access to the child.

(c) To facilitate further interrogation or investigation.

(d) Due to a lack of more appropriate facilities.

(3) A child alleged to be dependent under chapter 39 may not, under any circumstances, be placed into secure detention care.

(4) The department may develop nonsecure, nonresidential evening-reporting centers as an alternative to placing a child in secure detention to serve children and families while awaiting court hearings. Evening-reporting centers may be


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collocated with the juvenile assessment center. At a minimum, evening-reporting centers shall be operated during the afternoon and evening hours and provide a highly structured program of supervision. Evening-reporting centers may also provide academic tutoring, counseling, family engagement programs, and other activities.

(5) ~~(4)~~ The department shall continue to identify alternatives to secure detention care and shall develop such alternatives and annually submit them to the Legislature for authorization and appropriation.

Section 12. Paragraph (b) of subsection (2) and subsection (4) of section 985.245, Florida Statutes, are amended to read:

985.245 Risk assessment instrument.—

(2)

(b) The risk assessment instrument, at a minimum, shall consider ~~take into consideration, but need not be limited to,~~ prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. The risk assessment instrument shall also consider ~~take into consideration~~ appropriate aggravating and mitigating circumstances, ~~and~~ shall be designed to target a narrower population of children than s. 985.255, and~~. The risk assessment instrument~~ shall ~~also~~ include any information concerning the child's history of abuse and neglect. The risk assessment shall indicate whether detention care is warranted~~,~~ and, if detention care is warranted, whether the child should be placed into secure or~~,~~ 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 commitment ~~and who~~ is charged with committing a new offense, the risk assessment instrument may be completed and scored based on the underlying charge for which the child was placed under the supervision of the department and the new offense.

Section 13. Subsection (1) of section 985.25, Florida Statutes, is amended to read:

985.25 Detention intake.—

(1) The department ~~juvenile probation officer~~ shall receive custody of a child who has been taken into custody from the law enforcement agency or court and shall review the facts in the law enforcement report or probable cause affidavit and make such further inquiry as may be necessary to determine whether detention care is appropriate ~~required~~.

(a) During the period of time from the taking of the child into custody to the date of the detention hearing, the initial decision as to the child's placement into secure detention care or~~,~~ nonsecure detention care~~, or home detention care~~ shall be made by the department ~~juvenile probation officer~~ under ss. 985.24 and 985.245(1).

(b) The department ~~juvenile probation officer~~ shall base its ~~the~~ decision as to whether ~~or not~~ to place the child into secure ~~detention care, home detention care,~~ or nonsecure detention care on an assessment of risk in accordance with the risk assessment instrument and procedures developed by the department under s. 985.245. However, a child charged with possessing or discharging a firearm on school property in


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

(c) If the child's final score on the risk assessment instrument indicates that ~~juvenile probation officer determines that a child who is eligible for~~ detention care is appropriate, but the department otherwise determines he or she ~~based upon the results of the risk assessment instrument~~ should be released, the department ~~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 department ~~juvenile probation officer~~ in accordance with ss. 985.115 and 985.13.

~~Under no circumstances shall~~ The department, ~~juvenile probation officer or~~ the state attorney, or a law enforcement officer may not authorize the detention of any child in a jail or other facility intended or used for the detention of adults~~,~~ without an order of the court.

Section 14. Section 985.255, Florida Statutes, is amended 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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~~may continue to be detained by the court~~ if:

(a) The child is alleged to be an escapee from a residential commitment program~~;~~ or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision~~;~~ or is alleged to have escaped while being lawfully transported to or from a residential commitment program.

(b) The child is wanted in another jurisdiction for an offense that ~~which~~, if committed by an adult, would be a felony.

(c) The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

(d) The child is charged with committing an offense of domestic violence as defined in s. 741.28 and is detained as provided in subsection (2).

(e) The child is charged with possession or discharging a firearm on school property in violation of s. 790.115 or the illegal possession of a firearm.

(f) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree which ~~that~~ does not involve a violation of chapter 893, or a felony of the third degree which ~~that~~ is also a crime of violence, including any such offense involving the use or possession of a firearm.

(g) The child is charged with a felony of the ~~any~~ second degree or a felony of the third degree ~~felony~~ involving a violation of chapter 893 or a felony of the ~~any~~ third degree which ~~felony that~~ is not also a crime of violence, and the

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child:

1. Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;

2. Has a record of law violations before ~~prior to~~ court hearings;

3. Has already been detained or has been released and is awaiting final disposition of the case;

4. Has a record of violent conduct resulting in physical injury to others; or

5. Is found to have been in possession of a firearm.

(h) The child is alleged to have violated the conditions of the child's probation or conditional release supervision. However, a child detained under this paragraph may be held only in a consequence unit as provided in s. 985.439. If a consequence unit is not available, the child shall be placed on nonsecure ~~home~~ detention with electronic monitoring.

(i) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:~~,~~

1. For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or

2. At two or more court hearings of any nature on the same case, regardless of the results of the risk assessment instrument.

A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and

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

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

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

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

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


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The child may continue to be held in detention care if the court makes a specific, written finding that respite care is unavailable or it ~~detention care~~ is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits provided ~~set forth~~ in this section or s. 985.26.

(3)(a) ~~A child who meets any of the criteria in subsection (1) and who is ordered to be detained under that subsection shall be given a hearing within 24 hours after being taken into custody.~~ The purpose of the detention hearing required under subsection (1) is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. Unless a child is detained under paragraph (1)(d) or paragraph (1)(e), the court shall use the results of the risk assessment performed by the department ~~juvenile probation officer~~ and, based on the criteria in subsection (1), shall determine the need for continued detention. ~~A child placed into secure, nonsecure, or home detention care may continue to be so 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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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 is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4). If the court order does not include a date of release, the release date must be requested of the court on the same date the youth was placed on detention care. If a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order placing the youth on detention care must reflect the next detention review hearing, which should be held within 3 calendar 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 or~~,~~ nonsecure~~, or home~~ detention care for more ~~longer~~ 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 or~~,~~ 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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additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional 9 days if the child is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual.

(3) Except as provided in subsection (2), a child may not be held in secure or~~,~~ 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 or~~,~~ nonsecure~~, or home~~ detention care only pursuant to a court hearing in which the original risk assessment instrument and the~~, rescored based on~~ newly discovered evidence or changed circumstances are introduced into evidence with a rescored risk assessment instrument ~~with the results recommending detention, is introduced into evidence~~.

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

A ~~The~~ child shall be housed separately from adult inmates to prohibit the ~~a~~ child from having regular contact with


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incarcerated adults, including trustees. As used in this subsection, the term "regular contact" means sight and sound contact. Separation of children from adults may not allow ~~shall permit no~~ more than haphazard or accidental contact. The receiving jail or other facility shall provide ~~contain~~ a separate section for children and shall have ~~an adequate~~ staff adequate to supervise and monitor the child's activities at all times. Supervision and monitoring of children includes physical observation and documented checks by jail or receiving facility supervisory personnel at intervals not to exceed 10 ~~15~~ minutes. This subsection does not prohibit placing two or more children in the same cell. ~~Under no circumstances shall~~ A child may not be placed in a ~~the same~~ cell with an adult.

Section 17. Section 985.27, Florida Statutes, is amended to read:

985.27 Postadjudication ~~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.

(a) ~~A child who is awaiting placement in a low-risk residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. Any child held in secure detention during the 5 days must meet detention admission criteria under this part. A child who is placed in home detention care, nonsecure detention care, or home or nonsecure detention care with electronic monitoring, while awaiting placement in a minimum-risk or low-risk program, may be~~


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~~held in secure detention care for 5 days, if the child violates the conditions of the home detention care, the nonsecure detention care, or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.~~

~~(b)~~ A child who is awaiting placement in a nonsecure ~~moderate-risk~~ residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. A ~~Any~~ child held in secure detention during the 5 days must meet detention admission criteria under this part. The department may seek an order from the court authorizing continued detention for a specific period of time necessary for the appropriate residential placement of the child. However, such continued detention in secure detention care may not exceed 15 days after entry of the commitment order, excluding Saturdays, Sundays, and legal holidays, and except as otherwise provided in this section. A child who is placed in ~~home detention care,~~ nonsecure detention care~~,~~ or ~~home or~~ nonsecure detention care with electronic monitoring~~,~~ while awaiting placement in a nonsecure residential ~~moderate-risk~~ program~~,~~ may be held in secure detention care for 5 days~~,~~ if the child violates the conditions of ~~the home detention care,~~ the nonsecure detention care~~,~~ or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.

(b)~~(c)~~ If the child is committed to a high-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.

(c)~~(d)~~ If the child is committed to a maximum-risk

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residential program, the child must be held in secure detention care until placement or commitment is accomplished.

(2) Regardless of detention status, a child being transported by the department to a residential commitment facility of the department may be placed in secure detention for up to 24 hours ~~overnight, not to exceed a 24-hour period,~~ for the specific purpose of ensuring the safe delivery of the child to his or her residential commitment program, court, 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.—

(1) If an authorized agent of the department has reasonable grounds to believe that a ~~any~~ delinquent child committed to the department has escaped from a residential commitment facility or in the course of lawful transportation to or from such facility ~~from being lawfully transported thereto or therefrom,~~ or has absconded from a nonresidential commitment facility, the agent shall notify law enforcement and, if the offense qualifies under chapter 960, notify the victim, and make every reasonable effort to locate the delinquent child. The child may be returned ~~take the child into active custody and may deliver the child~~ to the facility or, if it is closer, to a detention center for return to the facility. However, a child may not be held in detention more ~~longer~~ than 24 hours, excluding Saturdays, Sundays, and legal holidays, unless a special order so directing is made by the judge after a detention hearing resulting in a finding that detention is required based on the criteria in s. 985.255. The

order must ~~shall~~ state the reasons for such finding. The reasons are ~~shall be~~ reviewable by appeal or in habeas corpus proceedings in the district court of appeal.

Section 19. Paragraph (b) of subsection (4), paragraph (h) of subsection (6), and paragraph (a) of subsection (7) of section 985.433, Florida Statutes, are amended to read:

985.433 Disposition hearings in delinquency 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 determination of the suitability or nonsuitability for adjudication and commitment of the child to the department. This 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:

(h) The child's educational status, including, but not limited to, the child's strengths, abilities, and unmet and special educational needs. The report must ~~shall~~ identify appropriate educational and career ~~vocational~~ goals for the child. Examples of appropriate goals include:

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1. Attainment of a high school diploma or its equivalent.

2. Successful completion of literacy course(s).

3. Successful completion of career and technical educational ~~vocational~~ course(s).

4. Successful attendance and completion of the child's current grade, or recovery of credits of classes the child 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 department ~~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 if commitment is 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

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level for the child. The court shall consider the department's 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.—

(3) A probation program must also include a rehabilitative program component such as a requirement of participation in substance abuse treatment or in a school or career and technical ~~other~~ educational program. The nonconsent of the child to treatment in a substance abuse treatment program does not preclude ~~in no way precludes~~ the court from ordering such treatment. Upon the recommendation of the department at the time of disposition, or subsequent to disposition pursuant to the filing of a petition alleging a violation of the child's conditions of postcommitment probation, the court may order the child to submit to random testing for the purpose of detecting 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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with specific technical conditions of probation must be detailed in the disposition order.

(5)~~(4)~~ An evaluation of the youth's risk to reoffend ~~A classification scale for levels of supervision~~ shall be provided by the department, taking into account the child's needs and risks relative to probation supervision requirements to reasonably ensure the public safety. Probation programs for children shall be supervised by the department or by any other person or agency specifically authorized by the court. These programs must include, but are not limited to, structured or restricted activities as described in this section and s. 985.439, and shall be designed to encourage the child toward 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 a child on probation or postcommitment probation, regardless of adjudication ~~an adjudicated delinquent child~~.

(4) Upon the child's admission, or if the court finds after a hearing that the child has violated the conditions of probation or postcommitment probation, the court shall enter an order revoking, modifying, or continuing probation or postcommitment probation. In each such case, the court shall enter a new disposition order and, in addition to the sanctions set forth in this section, may impose any sanction the court could have imposed at the original disposition hearing. If the


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child is found to have violated the conditions of probation or 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 program, the court must approve specific consequences for specific violations of the conditions of probation.

Section 22. Subsection (2) of section 985.441, Florida

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Statutes, is amended to read:

985.441 Commitment.—

(2) Notwithstanding subsection (1), the court having jurisdiction over an adjudicated delinquent child whose ~~underlying~~ offense is ~~was~~ a misdemeanor, or a child who is currently on probation for a misdemeanor, may not commit the child for any misdemeanor offense or any probation violation that is technical in nature and not a new violation of law at a restrictiveness level other than minimum-risk nonresidential ~~unless the probation violation is a new violation of law constituting a felony~~. However, the court may commit such child to a nonsecure ~~low-risk or moderate-risk~~ residential placement if:

(a) The child has previously been adjudicated or had adjudication withheld for a felony offense;

(b) The child has previously been adjudicated or had adjudication withheld for three or more misdemeanor offenses within the preceding 18 months;

(c) The child is before the court for disposition for a violation of s. 800.03, s. 806.031, or s. 828.12; or

(d) The court finds by a preponderance of the evidence that the protection of the public requires such placement or that the particular needs of the child would be best served by such placement. Such finding must be in writing.

Section 23. Paragraph (a) of subsection (1) and subsection (5) of section 985.46, Florida Statutes, are amended to read:

985.46 Conditional release.—

(1) The Legislature finds that:

(a) Conditional release is the care, treatment, help,

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provision of transition-to-adulthood services, and supervision provided to juveniles released from residential commitment 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 an ~~the~~ educational or career and technical educational 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.—

(1) The Legislature finds that ~~older~~ youth are faced with the need to learn how to support themselves within legal means and overcome the stigma of being delinquent. In most cases, parents expedite this transition. It is the intent of the Legislature that the department provide ~~older~~ youth in its custody or under its supervision with opportunities for participating in transition-to-adulthood services while in the department's commitment programs or in probation or conditional release programs in the community. These services should be reasonable and appropriate for the youths' respective ages or special needs and provide activities that build life skills and increase the ability to live independently and become self-

sufficient.

(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 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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service providers, and the youth's family. Activities may include, but are not limited to, life skills training, including training to develop banking and budgeting skills, interviewing and career planning skills, parenting skills, personal health management, and time management or organizational skills; educational support; employment training; and counseling.

(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.

(f) Assist the youth in building a portfolio of educational


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and vocational accomplishments, necessary identification, resumes, and cover letters in an effort to enhance the youth's employability.

(g) Collaborate with school district contacts to facilitate appropriate educational services based on the youth's identified needs.

(5) For a child ~~who is 17 years of age or older,~~ under the department's care or supervision, and without benefit of parents or legal guardians capable of assisting the child in the transition to adult life, the department may provide an assessment to determine the child's skills and abilities to live independently and become self-sufficient. Based on the assessment and within existing resources, services and training may be provided in order to develop the necessary skills and abilities ~~before the child's 18th birthday~~.

Section 25. Paragraph (b) of subsection (3) of section 985.481, Florida Statutes, is amended to read:

985.481 Sexual offenders adjudicated delinquent; notification upon release.—

(3)

(b) ~~No later than November 1, 2007,~~ The department shall ~~must~~ make the information described in subparagraph (a)1. available electronically to the Department of Law Enforcement in its database and in a format that is compatible with the requirements of the Florida Crime Information Center.

Section 26. Subsection (5) of section 985.4815, Florida Statutes, is amended to read:

985.4815 Notification to Department of Law Enforcement of 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 shall ~~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. The Legislature recognizes that the purpose of the juvenile justice system is to increase public safety by reducing juvenile delinquency and recognizes the importance of ensuring that children who are assessed as low and moderate risk to reoffend are considered for placement in a nonresidential program.

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

And the title is amended as follows:

Delete line 123

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and insert:

s. 985.601, F.S.; providing legislative intent; requiring the department to contract

By Senator Bradley

7-00541D-14 2014700__

A bill to be entitled

An act relating to the Department of Juvenile Justice; amending s. 985.01, F.S.; revising the purposes of ch. 985, F.S., relating to juvenile justice; amending s. 985.02, F.S.; revising the legislative intent and findings relating to the juvenile justice system; amending s. 985.03, F.S.; defining and redefining terms; amending s. 985.0301, F.S.; 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; deleting provisions relating to the retention of jurisdiction by the court of a child under certain circumstances; conforming provisions to changes made by the act; amending s. 985.037, F.S.; 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; requiring the court to review the placement of a child in a secure detention facility upon motion by the defense or state attorney; conforming provisions to changes made by the act; repealing s. 985.105, F.S., relating to youth custody officers; amending s. 985.11, F.S.; providing that a child's fingerprints do not need to be submitted to the Department of Law Enforcement under certain circumstances; amending s. 985.14, F.S.; authorizing juvenile assessment center personnel to perform the intake process for children in custody of the Department of Juvenile Justice; providing

requirements for the intake process; amending s. 985.145, F.S.; transferring responsibilities relating to the intake process from the juvenile probation officer to the department; creating s. 985.17, F.S.; providing goals for the department's prevention services; requiring the department to engage with certain faith-based and community-based organizations; requiring the department to establish volunteer coordinators; requiring the department to promote a specified license plate; providing for the use of funds related to prevention services; amending s. 985.24, F.S.; requiring that a determination or court order regarding the use of detention care include any findings that the child illegally possessed a firearm; authorizing the department to develop evening-reporting centers; providing requirements for such centers; conforming provisions to changes made by the act; amending s. 985.245, F.S.; conforming provisions to changes made by the act; amending s. 985.25, F.S.; transferring the responsibility for detention intake from the juvenile probation officer to the department; requiring that a child be placed in secure detention care until the child's detention hearing under certain circumstances; conforming provisions to changes made by the act; amending s. 985.255, F.S.; requiring that a child taken into custody and placed into secure or nonsecure detention care be given a hearing within a certain timeframe; authorizing the court to order continued detention under certain circumstances;

requiring that, if the initial order placing the youth on detention care does not include a release date, a release date be requested of the court on the same date the youth is placed on detention care; requiring that, if a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order reflect the date of the next detention review hearing, which must be within 3 calendar days after the child's initial detention placement; conforming provisions to changes made by the act; amending s. 985.26, F.S.; conforming provisions to changes made by the act; amending s. 985.265, F.S.; requiring that detention staff immediately notify law enforcement, school personnel, and the victim, when a juvenile charged with a specified crime is released from secure detention or transferred to nonsecure detention; conforming provisions to changes made by the act; amending s. 985.27, F.S.; conforming provisions to changes made by the act; amending s. 985.275, F.S.; requiring an authorized agent of the department to notify law enforcement and attempt to locate a child who has escaped from a residential commitment facility; requiring that the victim be notified under certain circumstances; amending s. 985.433, F.S.; revising provisions relating to educational goals of a child in a predisposition report; requiring the department, rather than the juvenile probation officer, to recommend to the court the most appropriate treatment

and placement plan; amending s. 985.435, F.S.; authorizing a probation program to include an alternative consequence component; providing requirements for such component; requiring that the department provide an evaluation of the youth's risk to reoffend; conforming provisions to changes made by the act; amending s. 985.439, F.S.; providing that the section applies to children on probation or postcommitment probation, regardless of adjudication; authorizing the department to establish programs to provide alternative consequences for certain probation violations; providing requirements for such programs; conforming provisions to changes made by the act; amending s. 985.441, F.S.; providing that the court may commit a child who is on probation for a misdemeanor or a certain probation violation only at a specified restrictiveness level; authorizing the court to commit such child to a nonsecure residential placement in certain circumstances; conforming provisions to changes made by the act; amending s. 985.46, F.S.; providing that conditional release includes transition-to-adulthood services; requiring certain students to participate in an educational or career education program; amending s. 985.461, F.S.; authorizing the department to provide transition-to-adulthood services under certain circumstances; authorizing the department to use community reentry teams composed of certain individuals and entities for certain purposes; removing age restrictions for youth

who receive transition-to-adulthood services; requiring the department to assist youth in developing a portfolio of certain accomplishments and to collaborate with school districts to facilitate certain educational services; amending ss. 985.481 and 985.4815, F.S.; deleting obsolete provisions; amending s. 985.601, F.S.; requiring the department to contract for programs to provide trauma-informed care, family engagement resources, and gender-specific programming; authorizing the department to pay expenses in support of certain programs; repealing s. 985.605, F.S., relating to prevention service programs, monitoring, and uniform performance measures; repealing s. 985.606, F.S., relating to prevention services providers, performance data collection, and reporting; repealing s. 985.61, F.S., relating to early delinquency intervention programs; amending s. 985.632, F.S.; revising legislative intent to include that the department establish a performance accountability system for certain providers that contract with the department; providing requirements for such contracts; requiring that the department's Bureau of Research and Planning submit a report to the Legislature; providing requirements for the report; defining terms; requiring that the department develop, in consultation with specified entities, a standard methodology for measuring, evaluating, and reporting; providing requirements for the methodology; deleting reporting requirements related to cost data; revising

the requirements of the department's cost-effectiveness model; requiring the department to establish a quality improvement system rather than a quality assurance system; conforming provisions to changes made by the act; amending s. 985.644, F.S.; providing that specified individuals are not required to submit to certain screenings under certain circumstances; creating s. 985.6441, F.S.; defining the terms "hospital" and "health care provider"; limiting the department's compensation of health care providers; amending s. 985.66, F.S.; revising the purpose of juvenile justice programs and courses; revising the duties of the department for staff development and training; providing that employees of certain contract providers may participate in the training program; amending s. 985.664, F.S.; requiring the juvenile justice circuit advisory board, rather than the secretary of the department, to appoint a new chair to that board; providing that the chair serves at the pleasure of the secretary; amending s. 985.672, F.S.; redefining the term "direct-support organization"; authorizing the department to allow the use of personnel services of the juvenile justice system by a direct-support organization; amending s. 985.682, F.S.; deleting provisions relating to a statewide study; conforming provisions to changes made by the act; amending s. 985.69, F.S.; providing for repair and maintenance funding for juvenile justice purposes; repealing s. 985.694, F.S., relating to the

Juvenile Care and Maintenance Trust Fund; amending s. 985.701, F.S.; defining the term "juvenile offender"; removing the requirement that the juvenile be detained by, supervised by, or committed to the custody of the department for the purposes of charging sexual misconduct by an employee of the department; creating s. 985.702, F.S.; defining terms; prohibiting an employee from willfully and maliciously neglecting a juvenile offender; providing criminal penalties; providing for dismissal from employment with the department; requiring an employee to report certain information; requiring the department's inspector general to conduct an appropriate administrative investigation; requiring that the inspector general notify the state attorney under certain circumstances; amending s. 943.0582, F.S.; requiring that the department expunge the nonjudicial arrest record of certain minors under certain circumstances; repealing s. 945.75, F.S., relating to tours of state correctional facilities for juveniles; amending s. 121.0515, F.S.; conforming provisions to changes made by the act; amending ss. 985.045 and 985.721, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 985.01, Florida Statutes, is amended to read:

985.01 Purposes and intent.—

(1) The purposes of this chapter are:

(a) To increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen and reform the lives of children.

(b) ~~(a)~~ To provide judicial and other procedures to assure due process through which children, victims, and other interested parties are assured fair hearings by a respectful and respected court or other tribunal and the recognition, protection, and enforcement of their constitutional and other legal rights, while ensuring that public safety interests and the authority and dignity of the courts are adequately protected.

(c) ~~(b)~~ To provide ~~for the care, safety, and protection of children in~~ an environment that fosters healthy social, emotional, intellectual, educational, and physical development; to ensure secure and safe custody; and to promote the health and well-being of all children under the state's care.

(d) ~~(c)~~ To ensure the protection of society, by providing for a comprehensive standardized assessment of the child's needs so that the most appropriate control, discipline, punishment, and treatment can be administered consistent with the seriousness of the act committed, the community's long-term need for public safety, the prior record of the child, and the specific rehabilitation needs of the child, while also providing, whenever possible, restitution to the victim of the offense.

(e) ~~(d)~~ To preserve and strengthen the child's family ties,

whenever possible, by providing for removal of the child from the physical custody of a parent ~~parental custody~~ only when his or her welfare or the safety and protection of the public cannot be adequately safeguarded without such removal; and, when the child is removed from his or her own family, to secure custody, care, and discipline for the child as nearly as possible equivalent to that which should have been given by the parents~~; and to assure, in all cases in which a child must be permanently removed from parental custody, that the child be placed in an approved family home, adoptive home, independent living program, or other placement that provides the most stable and permanent living arrangement for the child, as determined by the court~~.

(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.

2. To assure that the sentencing and placement of a child tried as an adult be appropriate and in keeping with the seriousness of the offense and the child's need for rehabilitative services, and that the proceedings and procedures applicable to such sentencing and placement be applied within the full framework of constitutional standards of fundamental fairness and due process.

(g) ~~(f)~~ To provide children committed to the department with training in life skills, including career and technical

education, if appropriate.

(h) To care for children in the least restrictive and most appropriate service environments.

(i) To allocate resources for the most effective programs, services, and treatments to ensure that children, their families, and their community support systems are connected with these programs, services, and treatments at the most impactful points along the juvenile justice continuum.

(2) It is the intent of the Legislature that this chapter be liberally interpreted and construed in conformity with its declared purposes.

Section 2. Section 985.02, Florida Statutes, is amended to read:

985.02 Legislative intent for the juvenile justice system.—

(1) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of the Legislature that the children of this state be provided with the following protections:

(a) Protection from abuse, neglect, and exploitation.

(b) A permanent and stable home.

(c) A safe and nurturing environment that ~~which~~ will preserve a sense of personal dignity and integrity.

(d) Adequate nutrition, shelter, and clothing.

(e) Effective treatment to address physical, social, and emotional needs, regardless of geographical location.

(f) Equal opportunity and access to quality and effective education, which will meet the individual needs of each child, and to recreation and other community resources to develop individual abilities.

(g) Access to preventive services.

~~(h) An independent, trained advocate when intervention is necessary, and a skilled guardian or caretaker in a safe environment when alternative placement is necessary.~~

(h)~~(i)~~ Gender-specific programming and gender-specific program models and services that comprehensively address the needs of a targeted gender group.

(2) SUBSTANCE ABUSE SERVICES.—The Legislature finds that children in the care of the state's ~~dependency and~~ delinquency system ~~systems~~ need appropriate health care services, that the impact of substance abuse on health indicates the need for health care services to include substance abuse services where appropriate, and that it is in the state's best interest that such children be provided the services they need to enable them to become and remain independent of state care. In order to provide these services, the state's ~~dependency and~~ delinquency system ~~systems~~ must have the ability to identify and provide appropriate intervention and treatment for children with personal or family-related substance abuse problems. It is therefore the purpose of the Legislature to provide authority for the state to contract with community substance abuse treatment providers for the development and operation of specialized support and overlay services for the ~~dependency and~~ delinquency system ~~systems~~, which will be fully implemented and used ~~utilized~~ as resources permit.

(3) JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—It is the policy of the state with respect to juvenile justice and delinquency prevention to first protect the public from acts of delinquency. In addition, it is the policy of the state to:

(a) Develop and implement effective methods of preventing

and reducing acts of delinquency, with a focus on maintaining and strengthening the family as a whole so that children may remain in their homes or communities.

(b) Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization and deep-end commitment.

(c) Provide well-trained personnel, high-quality services, and cost-effective programs within the juvenile justice system.

(d) Increase the capacity of local governments and public and private agencies to conduct rehabilitative treatment programs and to provide research, evaluation, and training services in the field of juvenile delinquency prevention.

~~The Legislature intends that detention care, in addition to providing secure and safe custody, will promote the health and well-being of the children committed thereto and provide an environment that fosters their social, emotional, intellectual, and physical development.~~

(4) DETENTION.—

(a) The Legislature finds that there is a need for a secure placement for certain children alleged to have committed a delinquent act. The Legislature finds that detention should be used only when less restrictive interim placement alternatives before ~~prior to~~ adjudication and disposition are not appropriate. The Legislature further finds that decisions to detain should be based in part on a prudent assessment of risk and be limited to situations where there is clear and convincing

evidence that a child presents a risk of failing to appear or presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior; presents a history of committing a serious property offense prior to adjudication, disposition, or placement; has acted in direct or indirect contempt of court; or requests protection from imminent bodily harm.

(b) The Legislature intends that a juvenile found to have committed a delinquent act understands the consequences and the serious nature of such behavior. Therefore, the Legislature finds that secure detention is appropriate to provide punishment for juveniles who pose a threat to public safety ~~that discourages further delinquent behavior~~. The Legislature also finds that certain juveniles have committed a sufficient number of criminal acts, including acts involving violence to persons, to represent sufficient danger to the community to warrant sentencing and placement within the adult system. It is the intent of the Legislature to establish clear criteria in order to identify these juveniles and remove them from the juvenile justice system.

(5) SITING OF FACILITIES.—

(a) The Legislature finds that timely siting and development of needed residential facilities for juvenile offenders is critical to the public safety of the citizens of this state and to the effective rehabilitation of juvenile 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

appropriated.

(c) The Legislature further finds that such facilities must be located in areas of the state close to the home communities of the children they house in order to ensure the most effective rehabilitation efforts, ~~and the most intensive~~ postrelease supervision, and case management. The placement of facilities close to the home communities of the children they house is also intended to facilitate family involvement in the treatment process. Residential facilities may not ~~shall~~ have ~~no~~ more than 90 ~~165~~ beds each, including campus-style programs, unless those campus-style programs include more than one ~~level of restrictiveness, provide multilevel education and~~ treatment program ~~programs~~ using different treatment protocols~~,~~ and have facilities that coexist separately in distinct locations on the 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.

The supervision, counseling, and rehabilitative treatment~~, and punitive~~ efforts of the juvenile justice system should avoid the inappropriate use of correctional programs and large institutions. ~~The Legislature finds that detention services should exceed the primary goal of providing safe and secure custody pending adjudication and disposition.~~

(6) PARENTAL, CUSTODIAL, AND GUARDIAN RESPONSIBILITIES.—Parents, custodians, and guardians are deemed by the state to be responsible for providing their children with sufficient

support, guidance, and supervision to deter their participation in delinquent acts. The state further recognizes that the ability of parents, custodians, and guardians to fulfill those responsibilities can be greatly impaired by economic, social, behavioral, emotional, and related problems. It is therefore the policy of the Legislature that it is the state's responsibility to ensure that factors impeding the ability of caretakers to fulfill their responsibilities are identified through the delinquency intake process and that appropriate recommendations to address those problems are considered in any judicial or nonjudicial proceeding. Nonetheless, as it is also the intent of the Legislature to preserve and strengthen the child's family ties, it is the policy of the Legislature that the emotional, legal, and financial responsibilities of the caretaker with regard to the care, custody, and support of the child continue while the child is in the physical or legal custody of the department.

(7) GENDER-SPECIFIC PROGRAMMING.—

(a) The Legislature finds that the prevention, treatment, and rehabilitation needs of children ~~youth~~ served by the juvenile justice system are gender specific ~~gender-specific~~.

(b) Gender-specific programming refers to unique program models and services that comprehensively address the needs of a targeted gender group. Gender-specific services require the adherence to the principle of equity to ensure that the different interests of young women and men are recognized and varying needs are met, with equality as the desired outcome. Gender-specific programming focuses on the differences between young females' and young males' roles and responsibilities,

positions in society, access to and use of resources, and social codes governing behavior. Gender-specific programs increase the effectiveness of programs by making interventions more appropriate to the specific needs of young women and men and ensuring that these programs do not unknowingly create, maintain, or reinforce gender roles or relations that may be damaging.

(8) TRAUMA-INFORMED CARE.—The Legislature finds that the department should use trauma-informed care as an approach to treating children with histories of trauma. Trauma-informed care assists service providers in recognizing the symptoms of trauma and acknowledges the role trauma has played in the child's life. Services for children should be based on an understanding of the vulnerabilities and triggers of trauma survivors which traditional service delivery approaches may exacerbate so that these services and programs can be more supportive and avoid re-traumatization. The department should use trauma-specific interventions that are designed to address the consequences of trauma in the child and to facilitate healing.

(9) FAMILY AND COMMUNITY ENGAGEMENT.—The Legislature finds that families and community support systems are critical to the success of children and to ensure that they are nondelinquent. Therefore, if appropriate, children who can be held accountable safely through serving and treating them in their homes and communities should be diverted from more restrictive placements within the juvenile justice system. The Legislature also finds that there should be an emphasis on strengthening the family and immersing them in their community support system. The department should develop customized plans that acknowledge the importance

of family and community support systems. The customized plans should recognize a child's individual needs, capitalize on his or her strengths, reduce risk to the child, and prepare the child for a successful transition to, and unification with, his or her family and community support system. The child's family shall be included in the department's process of assessing the needs, services and treatment, and community connections of the children who are involved with the juvenile justice system or in danger of becoming so involved.

Section 3. Section 985.03, Florida Statutes, is reordered and amended to read:

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

(1) "Abscond" means to hide, conceal, or absent oneself from the jurisdiction of the court or supervision of the department to avoid prosecution or supervision.

(2) ~~(1)~~ "Addictions receiving facility" means a substance abuse service provider as defined in chapter 397.

(3) ~~(2)~~ "Adjudicatory hearing" means a hearing for the court to determine whether or not the facts support the allegations stated in the petition, as is provided for under s. 985.35 in delinquency cases.

(4) ~~(3)~~ "Adult" means any natural person other than a child.

(5) ~~(4)~~ "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision, which may be binding or nonbinding.

(6) ~~(5)~~ "Authorized agent" or "designee" of the department means a person or agency assigned or designated by the

department ~~or the Department of Children and Family Services, as appropriate,~~ to perform duties or exercise powers under this chapter. The term ~~and~~ includes contract providers and their employees ~~for purposes of providing services to and managing cases of children in need of services and families in need of services~~.

(7)~~(6)~~ "Child," ~~or~~ "juvenile," or "youth" means any unmarried person younger than ~~under the age of~~ 18 years of age ~~who has not been emancipated by order of the court and who has been found or alleged to be dependent, in need of services, or from a family in need of services;~~ or any ~~married or unmarried~~ person who is alleged to have committed ~~charged with~~ a violation of law occurring before ~~prior to~~ the ~~time that~~ person reaches ~~reached the age of~~ 18 years of age.

(8)~~(7)~~ "Child in need of services" has the same meaning as provided in s. 984.03 ~~means a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the department or the Department of Children and Family Services for an adjudication of dependency or delinquency~~. ~~The child must also, under this chapter, be found by the court:~~

~~(a) To have persistently run away from the child's parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts shall include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by the department or the Department of~~

~~Children and Family Services;~~

~~(b) To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation under ss. 1003.26 and 1003.27 and through voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services; or~~

~~(c) To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and to be beyond their control despite efforts by the child's parents or legal custodians and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts may include such things as good faith participation in family or individual counseling.~~

(9)~~(8)~~ "Child who has been found to have committed a delinquent act" means a child who, under this chapter, is found by a court to have committed a violation of law or to be in direct or indirect contempt of court. The term~~, except that this definition~~ does not include a child who commits an act constituting contempt of court arising out of a dependency proceeding or a proceeding concerning a child or family in need of services.

~~(9) "Child support" means a court-ordered obligation, enforced under chapter 61 and ss. 409.2551-409.2597, for monetary support for the care, maintenance, training, and education of a child.~~

(10) "Circuit" means any of the 20 judicial circuits as set forth in s. 26.021.

(11) "Comprehensive assessment" or "assessment" means the gathering of information for the evaluation of a juvenile offender's or a child's physical, psychological, educational, career and technical educational ~~vocational~~, and social condition and family environment as they relate to the child's need for rehabilitative and treatment services, including substance abuse treatment ~~services~~, mental health ~~services~~, developmental ~~services~~, literacy ~~services~~, medical ~~services~~, family ~~services~~, and other specialized services, as appropriate.

(12) "Conditional release" means the care, treatment, help, transition-to-adulthood services, and supervision provided to a juvenile released from a residential commitment program which is intended to promote rehabilitation and prevent recidivism. The purpose of conditional release is to protect the public, reduce recidivism, increase responsible productive behavior, and provide for a successful transition of the youth from the department to his or her ~~the~~ family. Conditional release includes, but is not limited to, nonresidential community-based programs.

(13) "Court~~,~~" ~~unless otherwise expressly stated,~~ means the circuit court assigned to exercise jurisdiction under this chapter, unless otherwise expressly stated.

(14) "Day treatment" means a nonresidential, community-based program designed to provide therapeutic intervention to youth served by the department or who are placed on probation or conditional release or are committed to the minimum-risk nonresidential level. A day-treatment ~~day treatment~~ program may provide educational and career and technical educational ~~vocational~~ services and shall provide case management services;

individual, group, and family counseling; training designed to address delinquency risk factors; and monitoring of a youth's compliance with, and facilitation of a youth's completion of, sanctions if ordered by the court. Program types may include, but are not limited to, career programs, marine programs, juvenile justice alternative schools, training and rehabilitation programs, and gender-specific programs.

(15)(a) "Delinquency program" means any intake, probation, or similar program; regional detention center or facility; or community-based program, whether owned and operated by or contracted by the department, or institution-owned ~~institution owned~~ and operated by or contracted by the department, which provides intake, supervision, or custody and care of children who are alleged to be or who have been found to be delinquent under this chapter.

(b) "Delinquency program staff" means supervisory and direct care staff of a delinquency program as well as support staff who have direct contact with children in a delinquency program.

~~(c) "Delinquency prevention programs" means programs designed for the purpose of reducing the occurrence of delinquency, including criminal gang activity, and juvenile arrests. The term excludes arbitration, diversionary or mediation programs, and community service work or other treatment available subsequent to a child committing a delinquent act.~~

(16) "Department" means the Department of Juvenile Justice.

(17) "Designated facility" or "designated treatment facility" means any facility designated by the department to

provide treatment to juvenile offenders.

(18) "Detention care" means the temporary care of a child in secure or~~,~~ nonsecure~~, or home~~ detention, pending a court adjudication or disposition or execution of a court order. There are two ~~three~~ types of detention care, as follows:

(a) "Secure detention" means temporary custody of the child while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.

(b) "Nonsecure detention" ~~means 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.~~

~~(c) "Home detention"~~ means temporary nonsecure detention 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. Forms of nonsecure detention include, but are not limited to, home detention, electronic monitoring, day-reporting centers, evening-reporting centers, and nonsecure shelters. Nonsecure detention may include other requirements imposed by the court.

(19) "Detention center or 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 provides ~~may provide~~ secure ~~or nonsecure~~ custody. A facility

used for the commitment of adjudicated delinquents is ~~shall~~ not ~~be~~ considered a detention center or facility.

(20) "Detention hearing" means a hearing for the court to determine if a child should be placed in temporary custody, as provided for under part V in delinquency cases.

(21) "Disposition hearing" means a hearing in which the court determines the most appropriate dispositional services in the least restrictive available setting provided for under part VII, in delinquency cases.

(22) "Family" means a collective of persons, consisting of a child and a parent, guardian, adult custodian, or adult relative, in which:

(a) The persons reside in the same house or living unit; or

(b) The parent, guardian, adult custodian, or adult relative has a legal responsibility by blood, marriage, or court order to support or care for the child.

(23) "Family in need of services" has the same meaning as provided in s. 943.03 ~~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:~~

~~(a) Running away from parents or legal custodians;~~

~~(b) Persistently disobeying reasonable and lawful demands of parents or legal custodians, and being beyond their control;~~ ~~or~~

~~(c) Habitual truancy from school.~~

~~(24) "Foster care" means care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.~~

~~(25) "Habitually truant" means that:~~

~~(a) The child has 15 unexcused absences within 90 calendar days with or without the knowledge or justifiable consent of the child's parent or legal guardian, is subject to compulsory school attendance under s. 1003.21(1) and (2)(a), and is not exempt under s. 1003.21(3), s. 1003.24, or any other exemptions specified by law or the rules of the State Board of Education.~~

~~(b) Escalating activities to determine the cause, and to attempt the remediation, of the child's truant behavior under ss. 1003.26 and 1003.27 have been completed.~~

~~If a child who is subject to compulsory school attendance is responsive to the interventions described in ss. 1003.26 and 1003.27 and has completed the necessary requirements to pass the current grade as indicated in the district pupil progression plan, the child shall not be determined to be habitually truant and shall be passed. If a child within the compulsory school attendance age has 15 unexcused absences within 90 calendar days or fails to enroll in school, the state attorney may file a child-in-need-of-services petition. Before filing a petition, the child must be referred to the appropriate agency for evaluation. After consulting with the evaluating agency, the state attorney may elect to file a child-in-need-of-services petition.~~

~~(c) A school representative, designated according to school board policy, and a juvenile probation officer of the department~~

~~have jointly investigated the truancy problem or, if that was not feasible, have performed separate investigations to identify conditions that could be contributing to the truant behavior; and if, after a joint staffing of the case to determine the necessity for services, such services were determined to be needed, the persons who performed the investigations met jointly with the family and child to discuss any referral to appropriate community agencies for economic services, family or individual counseling, or other services required to remedy the conditions that are contributing to the truant behavior.~~

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

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

(24) ~~(27)~~ "Intake" means the initial acceptance and screening by the department or juvenile assessment center personnel of a complaint or a law enforcement report or probable cause affidavit of delinquency~~, family in need of services, or child in need of services~~ to determine the recommendation to be taken in the best interests of the child, the family, and the

community. The emphasis of intake is on diversion and the least restrictive available services and~~. Consequently, intake~~ 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 department ~~juvenile probation officer~~ of judicial handling, if ~~when~~ appropriate and warranted.

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

(26)~~(29)~~ "Juvenile justice continuum" includes, but is not limited to, ~~delinquency~~ prevention programs and services designed for the purpose of preventing or reducing delinquent acts, including criminal activity by criminal gangs, and juvenile arrests, as well as programs and services targeted at children who have committed delinquent acts~~,~~ and ~~children~~ who have previously been committed to residential treatment programs for delinquents. The term includes children-in-need-of-services and families-in-need-of-services programs under chapter 984; conditional release; substance abuse and mental health programs; educational and career programs; recreational programs; community services programs; community service work programs; mother-infant programs; and alternative dispute resolution programs serving children at risk of delinquency and their families, whether offered or delivered by state or local governmental entities, public or private for-profit or not-for-profit organizations, or religious or charitable organizations.

(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 Families ~~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.

(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.

(34) ~~(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 mother-infant program facility must be licensed as a child care facility under s. 402.308 and must provide the services and support necessary to enable each juvenile mother committed to the facility to provide for the needs of her infant ~~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.

(37) ~~(40)~~ "Ordinary medical care" means medical procedures that are administered or performed on a routine basis and includes, but is ~~include, but are~~ not limited to, inoculations, physical examinations, remedial treatment for minor illnesses and injuries, preventive services, medication management,

chronic disease detection and treatment, and other medical procedures that are administered or performed on a routine basis and that do not involve hospitalization, surgery, the use of general anesthesia, or the provision of psychotropic medications.

(38) ~~(41)~~ "Parent" means a woman who gives birth to a child and a man whose consent to the adoption of the child would be 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 terminated~~,~~ or an alleged or prospective parent~~,~~ unless the parental status falls within the terms of ~~either~~ s. 39.503(1) or s. 63.062(1).

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

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

~~(43) "Preventive services" means social services and other supportive and rehabilitative services provided to the parent of the child, the legal guardian of the child, or the custodian of the child and to the child for the purpose of averting the removal of the child from the home or disruption of a family~~

~~which will or could result in the placement of a child in foster care. Social services and other supportive and rehabilitative services shall promote the child's need for a safe, continuous, stable living environment and shall promote family autonomy and shall strengthen family life as the first priority whenever possible.~~

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

(42)~~(45)~~ "Relative" means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by ~~the~~ whole or half blood, by affinity, or by adoption. The term does not include a stepparent.

(43)~~(46)~~ "Restrictiveness level" means the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children. Sections 985.601(10) and 985.721 apply to children placed in programs at any residential commitment level. The restrictiveness levels of commitment are as follows:

(a) *Minimum-risk nonresidential.*—Programs or program models

at this commitment level work with youth who remain in the community and participate at least 5 days per week in a day-treatment ~~day treatment~~ program. Youth assessed and classified for programs at this commitment level represent a minimum risk to themselves and public safety and do not require placement and services in residential settings. Youth in this level have full access to, and reside in, the community. Youth who have been found to have committed delinquent acts that involve firearms, that are sexual offenses, or that would be life felonies or first-degree ~~first degree~~ felonies if committed by an adult may not be committed to a program at this level.

~~(b) *Low-risk residential.*—Programs or program models at this commitment level are residential but may allow youth to have unsupervised access to the community. Residential facilities shall have no more than 165 beds each, including campus-style programs, unless those campus-style programs include more than one level of restrictiveness, provide multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Youth assessed and classified for placement in programs at this commitment level represent a low risk to themselves and public safety but do require placement and services in residential settings. Children who have been found to have committed delinquent acts that involve firearms, delinquent acts that are sexual offenses, or delinquent acts that would be life felonies or first degree felonies if committed by an adult shall not be committed to a program at this level.~~

(b) ~~(c)~~ *Nonsecure* ~~*Moderate-risk*~~ *residential.*—Programs or

program models at this commitment level are residential but may allow youth to have supervised access to the community. Facilities at this commitment level are either environmentally secure or~~,~~ staff secure, or are hardware secure ~~hardware-secure~~ with walls, fencing, or locking doors. Residential facilities at this commitment level may ~~shall~~ have up to 90 ~~no more than 165~~ beds each, including campus-style programs, unless those campus-style programs include more than one ~~level of restrictiveness, provide multilevel education and~~ treatment program ~~programs~~ using different treatment protocols~~,~~ and have facilities that coexist separately in distinct locations on the same property. Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of residents. Youth assessed and classified for placement in programs at this commitment level represent a low or moderate risk to public safety and require close supervision. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself, ~~or~~ herself, or others. Mechanical restraint may also be used when necessary.

(c)~~(d)~~ *High-risk residential.*—Programs or program models at this commitment level are residential and do not allow youth to have access to the community, except that temporary release providing community access for up to 72 continuous hours may be 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 to ~~attend~~ a family emergency or, during the final 60 days of his or her placement, ~~to~~ visit his or her home, enroll in school or a career and technical education ~~vocational~~ program, complete a job interview, or participate in a community service project.

High-risk residential facilities are hardware secure ~~hardware-secure~~ with perimeter fencing and locking doors. Residential facilities at this commitment level may ~~shall~~ have up to 90 ~~no more than 165~~ beds each, including campus-style programs, unless those campus-style programs include more than one ~~level of restrictiveness, provide multilevel education and~~ treatment program ~~programs~~ using different treatment protocols~~,~~ and have facilities that coexist separately in distinct locations on the same property. Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of residents. Youth assessed and classified for this level of placement require close supervision in a structured residential setting. Placement in programs at this level is prompted by a concern for public safety which ~~that~~ outweighs placement in programs at lower commitment levels. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself, ~~or~~ herself, or others. Mechanical restraint may also be used when necessary. The facility may provide for single cell occupancy, except that youth may be housed together during prerelease transition.

(d) ~~(c)~~ *Maximum-risk residential.*—Programs or program models at this commitment level include juvenile correctional facilities and juvenile prisons. The programs at this commitment level are long-term residential and do not allow youth to have access to the community. Facilities at this commitment level are maximum-custody and hardware secure~~, hardware-secure~~ with perimeter security fencing and locking doors. Residential facilities at this commitment level may ~~shall~~ have up to 90 ~~no more than 165~~ beds each, including campus-style programs, unless

those campus-style programs include more than one ~~level of restrictiveness, provide multilevel education and~~ treatment program ~~programs~~ using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of residents. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself, ~~or~~ herself, or others. Mechanical restraint may also be used when necessary. Facilities at this commitment level ~~The facility~~ shall provide for single cell occupancy, except that youth may be housed together during prerelease transition. Youth assessed and classified for this level of placement require close supervision in a maximum security residential setting. Placement in a program at this level is prompted by a demonstrated need to protect the public.

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

(45) ~~(48)~~ "Secure detention center or facility" means a physically restricting facility for the temporary care of children, pending adjudication, disposition, or placement.

(46) ~~(49)~~ "Shelter" means a place for the temporary care of a child who is alleged to be or who has been found to be delinquent.

~~(50) "Shelter hearing" means a hearing provided for under s. 984.14 in family-in-need-of-services cases or child-in-need-~~

~~of-services cases.~~

~~(51) "Staff-secure shelter" means a facility in which a child is supervised 24 hours a day by staff members who are awake while on duty. The facility is for the temporary care and assessment of a child who has been found to be dependent, who has violated a court order and been found in contempt of court, or whom the Department of Children and Family Services is unable to properly assess or place for assistance within the continuum of services provided for dependent children.~~

(47)~~(52)~~ "Substance abuse" means using, without medical reason, any psychoactive or mood-altering drug, including alcohol, in such a manner as to induce impairment resulting in dysfunctional social behavior.

(48)~~(53)~~ "Taken into custody" means the status of a child immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release, detention, placement, or other disposition as authorized by law.

(49)~~(54)~~ "Temporary legal custody" means the relationship that a juvenile court creates between a child and an adult relative of the child, adult nonrelative approved by the court, or other person until a more permanent arrangement is ordered. Temporary legal custody confers upon the custodian the right to have temporary physical custody of the child and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, and education, and ordinary medical, dental, psychiatric, and psychological care, unless these rights and duties are otherwise enlarged or limited by the court order establishing the temporary legal custody

relationship.

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

(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.

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

(c) Services that have proven effective toward achieving the transition to adulthood.

(52) "Trauma-informed care" means the provision of services 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 delinquency shall be filed in the county where the delinquent act or violation of law occurred. ~~,~~ ~~but~~ The circuit court for that county may transfer the case to the circuit court of the circuit in which the child resides or will reside at the time of detention or placement for dispositional purposes. A child who has been detained may ~~shall~~ be transferred to the ~~appropriate~~ detention center or facility in the circuit in which the child resides or will reside at the time of detention ~~or other placement directed by the receiving court~~.

(b) The jurisdiction to be exercised by the court when a child is taken into custody before the filing of a petition under subsection (2) shall be exercised by the circuit court for the county in which the child is taken into custody, and such court has ~~which court shall have~~ personal jurisdiction of the child and the child's parent or legal guardian. If the child has

been detained, upon the filing of a petition in the appropriate circuit court, the court that is exercising initial personal jurisdiction ~~of the person~~ of the child shall~~, if the child has been detained,~~ immediately order the child to be transferred to the detention center or facility or other placement as ordered by the court having subject matter jurisdiction of the case.

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

(b) Unless relinquished by its own order, the court retains jurisdiction over a child on probation until the child reaches 19 years of age ~~Notwithstanding ss. 743.07 and 985.455(3), the term of any order placing a child in a probation program must be until the child's 19th birthday unless he or she is released by the court on the motion of an interested party or on his or her own motion~~.

(c) 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.~~

~~(d) The court may retain jurisdiction over a child committed to the department for placement in a juvenile prison or in a high-risk or maximum-risk residential commitment program to allow the child to participate in a juvenile conditional release program pursuant to s. 985.46. The jurisdiction of the court may not be retained after the child's 22nd birthday. However, if the child is not successful in the conditional release program, the department may use the transfer procedure under s. 985.441(4).~~

~~(e) The court may retain jurisdiction over a child committed to the department for placement in an intensive~~

~~residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison or in a residential sex offender program until the child reaches the age of 21. If the court exercises this jurisdiction retention, it shall do so solely for the purpose of the child completing the intensive residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison, or in a residential sex offender program. Such jurisdiction retention does not apply for other programs, other purposes, or new offenses.~~

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

~~(g) 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.~~

(e) ~~(h)~~ The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied. To retain jurisdiction, the court shall enter a restitution order, which is separate from any disposition or order of commitment, on or before ~~prior to~~ the date that the court's jurisdiction would cease under this section. The contents of the restitution order are ~~shall be~~ limited to the child's name and address, the name and address of the parent or legal guardian, the name and address of the payee, the case number, the date and amount of

restitution ordered, any amount of restitution paid, the amount of restitution due and owing, and a notation that costs, interest, penalties, and attorney fees may also be due and owing. The terms of the restitution order are subject to s. 775.089(5).

(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, Florida Statutes, are amended to read:

985.037 Punishment for contempt of court; alternative sanctions.—

(2) PLACEMENT IN A SECURE DETENTION FACILITY.—A child may be placed in a secure detention facility for purposes of punishment for contempt of court if alternative sanctions are unavailable or inappropriate~~,~~ or if the child has already been ordered to serve an alternative sanction but failed to comply with the sanction. A delinquent child who has been held in direct or indirect contempt may be placed in a secure detention facility for up to ~~not to exceed~~ 5 days for a first offense and up to ~~not to exceed~~ 15 days for a second or subsequent offense.

(4) CONTEMPT OF COURT SANCTIONS; PROCEDURE AND DUE PROCESS.—

(a) If a child is charged with direct contempt of court, including traffic court, the court may impose an authorized sanction immediately. The court must hold a hearing to determine if the child committed direct contempt. Due process must be afforded to the child during such hearing.

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

the court must hold a hearing within 24 hours to determine whether the child committed indirect contempt of a valid court order. At the hearing, the following due process rights must be provided to the child:

1. Right to a copy of the order to show cause alleging facts supporting the contempt charge.

2. Right to an explanation of the nature and the consequences of the proceedings.

3. Right to legal counsel and the right to have legal counsel appointed by the court if the juvenile is indigent, under s. 985.033.

4. Right to confront witnesses.

5. Right to present witnesses.

6. Right to have a transcript or record of the proceeding.

7. Right to appeal to an appropriate court.

The child's parent or guardian may address the court regarding the due process rights of the child. Upon motion by the defense or state attorney, the court shall review the placement of the child ~~every 72 hours~~ to determine whether it is appropriate for the child to remain in the facility.

(c) The court may not order that a child be placed in a secure detention facility as ~~for~~ punishment for contempt unless the court determines that an alternative sanction is inappropriate or unavailable or that the child was initially ordered to an alternative sanction and did not comply with the alternative sanction. The court is encouraged to order a child to perform community service, up to the maximum number of hours, if ~~where~~ appropriate before ordering that the child be placed in

a secure detention facility as punishment for contempt of court.

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

Section 6. Section 985.105, Florida Statutes, is repealed.

Section 7. Subsection (1) of section 985.11, Florida Statutes, is amended to read:

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 shall ~~must~~ be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(a).

(b) Unless the child is issued a civil citation or participating in a similar diversion program pursuant to s. 985.12, a child who is charged with or found to have committed

one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault~~,~~ as defined in s. 784.011.

2. Battery~~,~~ as defined in s. 784.03.

3. Carrying a concealed weapon~~,~~ as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs~~,~~ as defined in s. 790.1615(1).

5. Neglect of a child~~,~~ as defined in s. 827.03(1)(e).

6. Assault on a law enforcement officer, a firefighter, or other specified officers~~,~~ as defined in s. 784.07(2)(a).

7. Open carrying of a weapon~~,~~ as defined in s. 790.053.

8. Exposure of sexual organs~~,~~ as defined in s. 800.03.

9. Unlawful possession of a firearm~~,~~ as defined in s. 790.22(5).

10. Petit theft~~,~~ as defined in s. 812.014.

11. Cruelty to animals~~,~~ as defined in s. 828.12(1).

12. Arson~~,~~ resulting in bodily harm to a firefighter~~,~~ as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has committed any other violation of law, as the agency deems appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and these records and all copies thereof must be marked "Juvenile

Confidential." These records are not available for public disclosure and inspection under s. 119.07(1) except as provided in ss. 943.053 and 985.04(2), but are ~~shall be~~ available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice purposes. These records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

(c) The court is ~~shall be~~ responsible for the fingerprinting of a ~~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.

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

985.14 Intake and case management system.—

(2) The intake process shall be performed by the department or juvenile assessment center personnel through a case management system. The purpose of the intake process is to assess the child's needs and risks and to determine the most appropriate treatment plan and setting for the child's

programmatic needs and risks. The intake process consists of an initial assessment and may be followed by a full mental health, substance abuse, or psychosexual evaluation. The intake process shall result in choosing the most appropriate services through a balancing of the interests and needs of the child with those of the family and the community ~~public~~. The juvenile probation officer shall make ~~be responsible for making~~ informed decisions and recommendations to other agencies, the state attorney, and the courts so that the child and family may receive the least intrusive service alternative throughout the judicial process. The department shall establish uniform procedures through which ~~for~~ the juvenile probation officer may ~~to~~ provide a preliminary screening of the child and family for substance abuse and mental health services before ~~prior to~~ the filing of a petition or as soon as possible thereafter and before ~~prior to~~ a disposition hearing.

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

985.145 Responsibilities of the department ~~juvenile probation officer~~ during intake; screenings and assessments.—

(1) The department ~~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 Families ~~Family Services~~ shall cooperate with the primary case manager in carrying out the duties and responsibilities described in this section. In addition to duties specified in other sections and through departmental rules, the department ~~assigned juvenile probation officer~~ shall be responsible for the

following:

(a) *Reviewing probable cause affidavit.*—The department ~~juvenile probation officer~~ shall make a preliminary determination as to whether the report, affidavit, or complaint is complete, consulting with the state attorney as ~~may be~~ necessary. A report, affidavit, or complaint alleging that a child has committed a delinquent act or violation of law shall be made to the intake office operating in the county in which the child is found or in which the delinquent act or violation of law occurred. Any person or agency having knowledge of the facts may make such a written report, affidavit, or complaint and shall furnish to the intake office facts sufficient to establish the jurisdiction of the court and to support a finding by the court that the child has committed a delinquent act or violation of law.

(b) *Notification concerning apparent insufficiencies in probable cause affidavit.*—In any case where the department ~~juvenile probation officer~~ or the state attorney finds that the report, affidavit, or complaint is insufficient by the standards for a probable cause affidavit, the department ~~juvenile probation officer~~ or state attorney shall return the report, affidavit, or complaint, without delay, to the person or agency originating the report, affidavit, or complaint or having knowledge of the facts or to the appropriate law enforcement agency having investigative jurisdiction of the offense, and shall request, and the person or agency shall promptly furnish, additional information in order to comply with the standards for 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 program, including, but not limited to, a teen court program; referral for community arbitration; or referral to some other program or agency for the purpose of nonofficial or nonjudicial 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.

(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 department ~~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 department ~~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. If ~~When~~ sufficient evidence exists to warrant a comprehensive assessment and the child fails to voluntarily participate in the assessment efforts, the department ~~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.

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 department ~~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.

(i) *Recommendation concerning a petition.*—Upon determining that the report, affidavit, or complaint complies with the standards of a probable cause affidavit and that the interests of the child and the public will be best served, the department ~~juvenile probation officer~~ may recommend that a delinquency petition not be filed. If such a recommendation is made, the department ~~juvenile probation officer~~ shall advise in writing the person or agency making the report, affidavit, or complaint, the victim, if any, and the law enforcement agency having investigative jurisdiction over the offense of the recommendation; the reasons therefor; and that the person or agency may submit, within 10 days after the receipt of such notice, the report, affidavit, or complaint to the state attorney for special review. The state attorney, upon receiving a request for special review, shall consider the facts presented by the report, affidavit, or complaint~~,~~ and by the department ~~juvenile probation officer who made the recommendation that no petition be filed,~~ before making a final decision as to whether a petition or information should or should not be filed.

(j) *Completing intake report.*—Subject to the interagency agreement authorized under this paragraph, the department ~~the~~

~~juvenile probation officer for each case in which a child is alleged to have committed a violation of law or delinquent act and is not detained~~ shall submit a written report to the state attorney for each case in which a child is alleged to have committed a violation of law or delinquent act and is not detained. The report shall be submitted within 20 days after the date the child is taken into custody and must include~~, including~~ the original police report, complaint, or affidavit, or a copy thereof, and ~~including~~ a copy of the child's prior juvenile record~~, within 20 days after the date the child is taken into custody~~. In cases in which the child is in detention, the intake office report must be submitted within 24 hours after the child is placed into detention. The intake office report may include a recommendation that a petition or information be filed or that no petition or information be filed and may set forth reasons for the recommendation. The state attorney and the department may, on a district-by-district basis, enter into interagency agreements denoting the cases that will require a recommendation and those for which a recommendation is unnecessary.

(2) Before ~~Prior to~~ requesting that a delinquency petition be filed or before ~~prior to~~ filing a dependency petition, the department ~~juvenile probation officer~~ may request the parent or legal guardian of the child to attend a course of instruction in parenting skills, training in conflict resolution, and the practice of nonviolence; to accept counseling; or to receive other assistance from any agency in the community which notifies the clerk of the court of the availability of its services. If ~~Where~~ appropriate, the department ~~juvenile probation officer~~ shall request both parents or guardians to receive such parental

assistance. The department ~~juvenile probation officer~~ may, in determining whether to request that a delinquency petition be filed, take into consideration the willingness of the parent or legal guardian to comply with such request. The parent or guardian must provide the department ~~juvenile probation officer~~ with identifying information, including the parent's or guardian's name, address, date of birth, social security number, and driver ~~driver's~~ license number or identification card number in order to comply with s. 985.039.

(3) If ~~When~~ indicated by the comprehensive assessment, the department is authorized to contract within appropriated funds for services with a local nonprofit community mental health or substance abuse agency licensed or authorized under chapter 394 or chapter 397 or other authorized nonprofit social service agency providing related services. The determination of mental health or substance abuse services shall be conducted in coordination with existing programs providing mental health or 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 department ~~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 the child, but such information, and any information obtained directly or indirectly through the assessment process, is inadmissible in court before ~~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.

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

(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).

Section 10. Section 985.17, Florida Statutes, is created to read:

985.17 Prevention services.—

(1) Prevention services decrease recidivism by addressing the needs of at-risk youth and their families, preventing further involvement in the juvenile justice system, protecting public safety, and facilitating successful reentry into the community. To assist in decreasing recidivism, the department's prevention services should strengthen protective factors, reduce risk factors, and use tested and effective approaches.

(2) A primary focus of the department's prevention services is to develop capacity for local communities to serve their youth.

(a) The department shall engage faith-based and community-based organizations to provide a full range of voluntary programs and services to prevent and reduce juvenile delinquency, including, but not limited to, chaplaincy services, crisis intervention counseling, mentoring, and tutoring.

(b) The department shall establish volunteer coordinators in each circuit and encourage the recruitment of volunteers to serve as mentors for youth in department services.

(c) The department shall promote the Invest In Children license plate developed pursuant to s. 320.08058(11) to help fund programs and services to prevent juvenile delinquency. The department shall 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 pursuant to s. 320.08058(11).

(3) The department's prevention services for youth at risk of becoming delinquent should focus on preventing initial or further involvement in the juvenile justice system by including

services such as literacy services, gender-specific programming, and recreational and after-school services and should include targeted services to troubled, truant, ungovernable, abused, trafficked, or runaway youth. To decrease the likelihood that a youth will commit a delinquent act, the department may provide specialized services addressing the strengthening of families, job training, and substance abuse.

(4) In an effort to decrease the prevalence of disproportionate minority representation in the juvenile justice system, the department's prevention services should address the multiple needs of minority youth at risk of becoming delinquent.

(5) The department shall expend funds related to prevention services in a manner consistent with the policies expressed in ss. 984.02 and 985.01. The department shall expend such funds in a manner that maximizes accountability to the public and ensures the documentation of outcomes.

(a) As a condition of the receipt of state funds, entities that receive or use state moneys to fund prevention services through contracts with the department or grants from any entity dispersed by the department shall:

1. Design the programs providing such services to further one or more of the following strategies:

a. Encouraging youth to attend and succeed in school, which may include special assistance and tutoring to address deficiencies in academic performance and collecting outcome data to reveal the number of days youth attended school while participating in the program.

b. Engaging youth in productive and wholesome activities during nonschool hours which build positive character, instill

positive values, and enhance educational experiences.

c. Encouraging youth to avoid the use of violence.

d. Assisting youth in acquiring the skills needed to find meaningful employment, which may include assistance in finding a suitable employer for the youth.

2. Provide the department with demographic information, dates of services, and the type of interventions received by each youth.

(b) The department shall monitor output and outcome measures for each program strategy in paragraph (a) and include them in the annual Comprehensive Accountability Report published pursuant to s. 985.632.

(c) The department shall monitor all programs that receive or use state moneys to fund juvenile delinquency prevention services through contracts or grants with the department for compliance with all provisions in the contracts or grants.

Section 11. Section 985.24, Florida Statutes, is amended to read:

985.24 Use of detention; prohibitions.—

(1) All determinations and court orders regarding the use of ~~secure, nonsecure, or home~~ detention care must ~~shall~~ be based primarily upon findings that the child:

(a) Presents a substantial risk of not appearing at a subsequent hearing;

(b) Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including the illegal possession of a firearm;

(c) Presents a history of committing a property offense before ~~prior to~~ adjudication, disposition, or placement;

(d) Has committed contempt of court by:

1. Intentionally disrupting the administration of the court;

2. Intentionally disobeying a court order; or

3. Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or

(e) Requests protection from imminent bodily harm.

(2) A child alleged to have committed a delinquent act or violation of law may not be placed into secure or~~,~~ nonsecure~~, or home~~ detention care for any of the following reasons:

(a) To allow a parent to avoid his or her legal responsibility.

(b) To permit more convenient administrative access to the child.

(c) To facilitate further interrogation or investigation.

(d) Due to a lack of more appropriate facilities.

(3) A child alleged to be dependent under chapter 39 may not, under any circumstances, be placed into secure detention care.

(4) The department may develop nonsecure, nonresidential evening-reporting centers as an alternative to placing a child in secure detention to serve children and families while awaiting court hearings. Evening-reporting centers may be collocated with the juvenile assessment center. At a minimum, evening-reporting centers shall be operated during the afternoon and evening hours and provide a highly structured program of supervision. Evening-reporting centers may also provide academic tutoring, counseling, family engagement programs, and other

activities.

(5) ~~(4)~~ The department shall continue to identify alternatives to secure detention care and shall develop such alternatives and annually submit them to the Legislature for authorization and appropriation.

Section 12. Paragraph (b) of subsection (2) and subsection (4) of section 985.245, Florida Statutes, are amended to read:

985.245 Risk assessment instrument.—

(2)

(b) The risk assessment instrument, at a minimum, shall consider ~~take into consideration, but need not be limited to,~~ prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. The risk assessment instrument shall also consider ~~take into consideration~~ appropriate aggravating and mitigating circumstances, ~~and~~ shall be designed to target a narrower population of children than s. 985.255, and~~. The risk assessment instrument~~ shall ~~also~~ include any information concerning the child's history of abuse and neglect. The risk assessment shall indicate whether detention care is warranted~~,~~ and, if detention care is warranted, whether the child should be placed into secure or~~,~~ nonsecure~~, or home~~ detention care.

(4) If ~~For~~ a child who is under the supervision of the department through probation, ~~home detention,~~ nonsecure detention, conditional release, postcommitment probation, or commitment ~~and who~~ is charged with committing a new offense, the risk assessment instrument may be completed and scored based on

the underlying charge for which the child was placed under the supervision of the department and the new offense.

Section 13. Subsection (1) of section 985.25, Florida Statutes, is amended to read:

985.25 Detention intake.—

(1) The department ~~juvenile probation officer~~ shall receive custody of a child who has been taken into custody from the law enforcement agency or court and shall review the facts in the law enforcement report or probable cause affidavit and make such further inquiry as may be necessary to determine whether detention care is appropriate ~~required~~.

(a) During the period of time from the taking of the child into custody to the date of the detention hearing, the initial decision as to the child's placement into secure detention care or~~,~~ nonsecure detention care~~, or home detention care~~ shall be made by the department ~~juvenile probation officer~~ under ss. 985.24 and 985.245(1).

(b) The department ~~juvenile probation officer~~ shall base its ~~the~~ decision as to whether ~~or not~~ to place the child into secure ~~detention care, home detention care,~~ or nonsecure detention care on an assessment of risk in accordance with the risk assessment instrument and procedures developed by the department under s. 985.245. However, a child charged with possessing or discharging a firearm on school property in violation of s. 790.115 shall be placed in secure detention care. A child who has been taken into custody on three or more separate occasions within a 60-day period shall be placed in secure detention care until the child's detention hearing.

(c) If the child's final score on the risk assessment

instrument indicates that ~~juvenile probation officer determines that a child who is eligible for~~ detention care is appropriate, but the department otherwise determines he or she ~~based upon the results of the risk assessment instrument~~ should be released, the department ~~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 department ~~juvenile probation officer~~ in accordance with ss. 985.115 and 985.13.

~~Under no circumstances shall~~ The department, ~~juvenile probation officer or~~ the state attorney, or a law enforcement officer may not authorize the detention of any child in a jail or other facility intended or used for the detention of adults~~,~~ without an order of the court.

Section 14. Section 985.255, Florida Statutes, is amended 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 may continue to be detained by the court~~ if:

(a) The child is alleged to be an escapee from a residential commitment program~~;~~ or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision~~;~~ or is alleged to have escaped

while being lawfully transported to or from a residential commitment program.

(b) The child is wanted in another jurisdiction for an offense that ~~which~~, if committed by an adult, would be a felony.

(c) The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

(d) The child is charged with committing an offense of domestic violence as defined in s. 741.28 and is detained as provided in subsection (2).

(e) The child is charged with possession or discharging a firearm on school property in violation of s. 790.115 or the illegal possession of a firearm.

(f) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree which ~~that~~ does not involve a violation of chapter 893, or a felony of the third degree which ~~that~~ is also a crime of violence, including any such offense involving the use or possession of a firearm.

(g) The child is charged with a felony of the ~~any~~ second degree or a felony of the third degree ~~felony~~ involving a violation of chapter 893 or a felony of the ~~any~~ third degree which ~~felony that~~ is not also a crime of violence, and the child:

1. Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;

2. Has a record of law violations before ~~prior to~~ court

hearings;

3. Has already been detained or has been released and is awaiting final disposition of the case;

4. Has a record of violent conduct resulting in physical injury to others; or

5. Is found to have been in possession of a firearm.

(h) The child is alleged to have violated the conditions of the child's probation or conditional release supervision. However, a child detained under this paragraph may be held only in a consequence unit as provided in s. 985.439. If a consequence unit is not available, the child shall be placed on nonsecure ~~home~~ detention with electronic monitoring.

(i) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:~~,~~

1. For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or

2. At two or more court hearings of any nature on the same case, regardless of the results of the risk assessment instrument.

A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

~~(j) The child is detained on a judicial order for failure~~

~~to appear and has previously willfully failed to appear, after proper notice, at two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument. A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.~~

(2) A child who is charged with committing an offense 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:

(a) Respite care for the child is not available.

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

The child may not be held in secure detention under this subsection for more than 48 hours unless ordered by the court. After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that respite care is unavailable and it ~~detention care~~ is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits provided ~~set forth~~ in this section or s. 985.26.

(3)(a) ~~A child who meets any of the criteria in subsection (1) and who is ordered to be detained under that subsection shall be given a hearing within 24 hours after being taken into custody.~~ The purpose of the detention hearing required under subsection (1) is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. Unless a child is detained under paragraph (1)(d) or paragraph (1)(e), the court shall use the results of the risk assessment performed by the department ~~juvenile probation officer~~ and, based on the criteria in subsection (1), shall determine the need for continued detention. ~~A child placed into secure, nonsecure, or home detention care may continue to be so 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 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 is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4). If the court order does not include a date of release, the release date must be requested of the

court on the same date the youth was placed on detention care. If a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order placing the youth on detention care must reflect the next detention review hearing, which should be held within 3 calendar 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 or~~,~~ nonsecure~~, or home~~ detention care for more ~~longer~~ 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 or~~,~~ 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 additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional 9 days if the child is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual.

(3) Except as provided in subsection (2), a child may not be held in secure or~~,~~ 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 or~~,~~ nonsecure~~, or home~~ detention care only pursuant to a court hearing in which the original risk assessment instrument and the~~, rescored based on~~ newly discovered evidence or changed circumstances are introduced into evidence with a rescored risk assessment instrument ~~with the results recommending detention, is introduced into evidence~~.

(3)(a) If ~~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.

(b) If ~~When~~ a juvenile charged with murder under s. 782.04, sexual battery under chapter 794, stalking under s. 784.048, or domestic violence as defined in s. 741.28, or an attempt to commit any of these offenses ~~sexual offender~~, ~~under this subsection,~~ is released from secure detention or transferred to ~~home detention or~~ nonsecure detention, detention staff shall

immediately notify the appropriate law enforcement agency, ~~and~~ 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., ~~, 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.

A ~~The~~ child shall be housed separately from adult inmates to prohibit the ~~a~~ child from having regular contact with incarcerated adults, including trustees. As used in this subsection, the term "regular contact" means sight and sound contact. Separation of children from adults may not allow ~~shall permit no~~ more than haphazard or accidental contact. The receiving jail or other facility shall provide ~~contain~~ a separate section for children and shall have ~~an adequate~~ staff

adequate to supervise and monitor the child's activities at all times. Supervision and monitoring of children includes physical observation and documented checks by jail or receiving facility supervisory personnel at intervals not to exceed 10 ~~15~~ minutes. This subsection does not prohibit placing two or more children in the same cell. ~~Under no circumstances shall~~ A child may not be placed in a ~~the same~~ cell with an adult.

Section 17. Section 985.27, Florida Statutes, is amended to read:

985.27 Postadjudication ~~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.

(a) ~~A child who is awaiting placement in a low-risk residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. Any child held in secure detention during the 5 days must meet detention admission criteria under this part. A child who is placed in home detention care, nonsecure detention care, or home or nonsecure detention care with electronic monitoring, while awaiting placement in a minimum-risk or low-risk program, may be held in secure detention care for 5 days, if the child violates the conditions of the home detention care, the nonsecure detention care, or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.~~

~~(b)~~ A child who is awaiting placement in a nonsecure

~~moderate-risk~~ residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. A ~~Any~~ child held in secure detention during the 5 days must meet detention admission criteria under this part. The department may seek an order from the court authorizing continued detention for a specific period of time necessary for the appropriate residential placement of the child. However, such continued detention in secure detention care may not exceed 15 days after entry of the commitment order, excluding Saturdays, Sundays, and legal holidays, and except as otherwise provided in this section. A child who is placed in ~~home detention care,~~ nonsecure detention care~~,~~ or ~~home or~~ nonsecure detention care with electronic monitoring~~,~~ while awaiting placement in a nonsecure residential ~~moderate-risk~~ program~~,~~ may be held in secure detention care for 5 days~~,~~ if the child violates the conditions of ~~the home detention care,~~ the nonsecure detention care~~,~~ or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.

(b) ~~(c)~~ If the child is committed to a high-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.

(c) ~~(d)~~ If the child is committed to a maximum-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.

(2) Regardless of detention status, a child being transported by the department to a residential commitment facility of the department may be placed in secure detention for up to 24 hours ~~overnight, not to exceed a 24-hour period,~~ for

the specific purpose of ensuring the safe delivery of the child to his or her residential commitment program, court, 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.—

(1) If an authorized agent of the department has reasonable grounds to believe that a ~~any~~ delinquent child committed to the department has escaped from a residential commitment facility or in the course of lawful transportation to or from such facility ~~from being lawfully transported thereto or therefrom,~~ or has absconded from a nonresidential commitment facility, the agent shall notify law enforcement and, if the offense qualifies under chapter 960, notify the victim, and make every reasonable effort to locate the delinquent child. The child may be returned ~~take the child into active custody and may deliver the child~~ to the facility or, if it is closer, to a detention center for return to the facility. However, a child may not be held in detention more ~~longer~~ than 24 hours, excluding Saturdays, Sundays, and legal holidays, unless a special order so directing is made by the judge after a detention hearing resulting in a finding that detention is required based on the criteria in s. 985.255. The order must ~~shall~~ state the reasons for such finding. The reasons are ~~shall be~~ reviewable by appeal or in habeas corpus proceedings in the district court of appeal.

Section 19. Paragraph (b) of subsection (4), paragraph (h) of subsection (6), and paragraph (a) of subsection (7) of section 985.433, Florida Statutes, are amended to read:

985.433 Disposition hearings in delinquency 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 determination of the suitability or nonsuitability for adjudication and commitment of the child to the department. This 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:

(h) The child's educational status, including, but not limited to, the child's strengths, abilities, and unmet and special educational needs. The report must ~~shall~~ identify appropriate educational and career ~~vocational~~ goals for the child. Examples of appropriate goals include:

1. Attainment of a high school diploma or its equivalent.

2. Successful completion of literacy course(s).

3. Successful completion of career and technical educational ~~vocational~~ course(s).

4. Successful attendance and completion of the child's current grade, or recovery of credits of classes the child

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 department ~~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 if commitment is 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.

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.—

(3) A probation program must also include a rehabilitative program component such as a requirement of participation in substance abuse treatment or in a school or career and technical ~~other~~ educational program. The nonconsent of the child to treatment in a substance abuse treatment program does not preclude ~~in no way precludes~~ the court from ordering such treatment. Upon the recommendation of the department at the time of disposition, or subsequent to disposition pursuant to the filing of a petition alleging a violation of the child's conditions of postcommitment probation, the court may order the child to submit to random testing for the purpose of detecting 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 with specific technical conditions of probation must be detailed in the disposition order.

(5)~~(4)~~ An evaluation of the youth's risk to reoffend ~~A classification scale for levels of supervision~~ shall be provided by the department, taking into account the child's needs and risks relative to probation supervision requirements to

reasonably ensure the public safety. Probation programs for children shall be supervised by the department or by any other person or agency specifically authorized by the court. These programs must include, but are not limited to, structured or restricted activities as described in this section and s. 985.439, and shall be designed to encourage the child toward 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 a child on probation or postcommitment probation, regardless of adjudication ~~an adjudicated delinquent child~~.

(4) Upon the child's admission, or if the court finds after a hearing that the child has violated the conditions of probation or postcommitment probation, the court shall enter an order revoking, modifying, or continuing probation or postcommitment probation. In each such case, the court shall enter a new disposition order and, in addition to the sanctions set forth in this section, may impose any sanction the court could have imposed at the original disposition hearing. If the child is found to have violated the conditions of probation or 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 program, the court must approve specific consequences for specific violations of the conditions of probation.

Section 22. Subsection (2) of section 985.441, Florida Statutes, is amended to read:

985.441 Commitment.—

(2) Notwithstanding subsection (1), the court having jurisdiction over an adjudicated delinquent child whose ~~underlying~~ offense is ~~was~~ a misdemeanor, or a child who is currently on probation for a misdemeanor, may not commit the

child for any misdemeanor offense or any probation violation that is technical in nature and not a new violation of law at a restrictiveness level other than minimum-risk nonresidential ~~unless the probation violation is a new violation of law constituting a felony~~. However, the court may commit such child to a nonsecure ~~low-risk or moderate-risk~~ residential placement if:

(a) The child has previously been adjudicated or had adjudication withheld for a felony offense;

(b) The child has previously been adjudicated or had adjudication withheld for three or more misdemeanor offenses within the preceding 18 months;

(c) The child is before the court for disposition for a violation of s. 800.03, s. 806.031, or s. 828.12; or

(d) The court finds by a preponderance of the evidence that the protection of the public requires such placement or that the particular needs of the child would be best served by such placement. Such finding must be in writing.

Section 23. Paragraph (a) of subsection (1) and subsection (5) of section 985.46, Florida Statutes, are amended to read:

985.46 Conditional release.—

(1) The Legislature finds that:

(a) Conditional release is the care, treatment, help, provision of transition-to-adulthood services, and supervision provided to juveniles released from residential commitment 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 an ~~the~~ educational or career and technical educational 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.—

(1) The Legislature finds that ~~older~~ youth are faced with the need to learn how to support themselves within legal means and overcome the stigma of being delinquent. In most cases, parents expedite this transition. It is the intent of the Legislature that the department provide ~~older~~ youth in its custody or under its supervision with opportunities for participating in transition-to-adulthood services while in the department's commitment programs or in probation or conditional release programs in the community. These services should be reasonable and appropriate for the youths' respective ages or special needs and provide activities that build life skills and increase the ability to live independently and become self-sufficient.

(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 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 service providers, and the youth's family. Activities may include, but are not limited to, life skills training, including training to develop banking and budgeting skills, interviewing and career planning skills, parenting skills, personal health management, and time management or organizational skills; educational support; employment training; and counseling.

(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.

(f) Assist the youth in building a portfolio of educational and vocational accomplishments, necessary identification, resumes, and cover letters in an effort to enhance the youth's employability.

(g) Collaborate with school district contacts to facilitate appropriate educational services based on the youth's identified needs.

(5) For a child ~~who is 17 years of age or older,~~ under the department's care or supervision, and without benefit of parents or legal guardians capable of assisting the child in the transition to adult life, the department may provide an assessment to determine the child's skills and abilities to live independently and become self-sufficient. Based on the assessment and within existing resources, services and training may be provided in order to develop the necessary skills and abilities ~~before the child's 18th birthday~~.

Section 25. Paragraph (b) of subsection (3) of section 985.481, Florida Statutes, is amended to read:

985.481 Sexual offenders adjudicated delinquent; notification upon release.—

(3)

(b) ~~No later than November 1, 2007,~~ The department shall ~~must~~ make the information described in subparagraph (a)1. available electronically to the Department of Law Enforcement in its database and in a format that is compatible with the requirements of the Florida Crime Information Center.

Section 26. Subsection (5) of section 985.4815, Florida Statutes, is amended to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

(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 shall ~~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. 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.—

(3)(a) The department shall develop or contract for diversified and innovative programs to provide rehabilitative treatment, including early intervention and prevention, diversion, comprehensive intake, case management, diagnostic and classification assessments, trauma-informed care, individual and family counseling, family engagement resources and programs, gender-specific programming, shelter care, diversified detention care emphasizing alternatives to secure detention, diversified probation, halfway houses, foster homes, community-based substance abuse treatment services, community-based mental health treatment services, community-based residential and nonresidential programs, mother-infant programs, and environmental programs. The department may pay expenses in support of innovative programs and activities that address the identified needs and well-being of children in the department's care or under its supervision. Each program shall place particular emphasis on reintegration and conditional release for all children in the program.

(9)(a) The department shall operate a statewide, regionally 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

detention services for all counties. The plan must cover all the department's operating circuits, with each operating circuit having access to 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 ACCOUNTABILITY.—It 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

their differential effectiveness so that the quality of such programs can be compared and improvements made continually.

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

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

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

(f) Improve service delivery to children through the use of technical assistance ~~clients~~.

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

(h) Collect and analyze available statistical data for the purpose of ongoing evaluation of all programs.

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

(a) "Program" means any facility, service, or program for children which is operated by the department or by a provider under contract with the department.

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

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

(c) "Program group" means a collection of programs with

sufficient similarity of functions, services, and children to permit appropriate comparison among programs within the group.

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

(3) COMPREHENSIVE ACCOUNTABILITY REPORT.—The department, in consultation with the Office of Economic and Demographic Research, the Office of Program Policy Analysis and Government Accountability, and contract service providers, shall develop and use a standard methodology for annually measuring, evaluating, and reporting program outputs and child outcomes for each program and program group. The standard methodology must:

(a) Include common terminology and operational definitions for measuring the performance of system and program administration, program outputs, and program outcomes.

(b) Specify program outputs for each program and for each program group within the juvenile justice continuum.

(c) Specify desired child outcomes and methods by which child outcomes may be measured for each program and program group.

~~(3) The department shall annually collect and report cost data for every program operated or contracted by the department. The cost data shall conform to a format approved by the department and the Legislature. Uniform cost data shall be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The department shall ensure that there is accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. The cost of the educational program provided~~

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

(4)~~(a)~~ COST-EFFECTIVENESS MODEL.—The department, in consultation with the Office of Economic and Demographic Research and contract service providers, shall develop a cost-effectiveness model and apply the model to each commitment program. ~~Program recidivism rates shall be a component of the model.~~

(a) The cost-effectiveness model must ~~shall~~ compare program costs to expected and actual child recidivism rates ~~client outcomes and program outputs~~. It is the intent of the Legislature that continual development efforts take place to improve the validity and reliability of the cost-effectiveness model.

(b) The department shall rank commitment programs based on the cost-effectiveness model, performance measures, and adherence to quality improvement standards and shall ~~submit a~~ report this data in the annual Comprehensive Accountability

Report ~~to the appropriate substantive and fiscal committees of each house of the Legislature by December 31 of each year~~.

(c) Based on reports of the department on child ~~client~~ outcomes and program outputs and on the department's most recent cost-effectiveness rankings, the department may terminate a program operated by the department or a provider if the program has failed to achieve a minimum standard ~~threshold~~ of program effectiveness. This paragraph does not preclude the department from terminating a contract as provided under this section or as otherwise provided by law or contract, and does not limit the department's authority to enter into or terminate a contract.

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

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

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

2. Target, for a more comprehensive evaluation, any commitment program that has achieved consistently high, low, or

disparate ratings in the reports required under subparagraph 1. and target, for technical assistance, any commitment program that has achieved low or disparate ratings in the reports required under subparagraph 1.

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

4. Use the results of these evaluations in developing or refining juvenile justice programs or program models, child ~~client~~ outcomes and program outputs, provider contracts, quality improvement ~~assurance~~ standards, and the cost-effectiveness model.

(5) QUALITY IMPROVEMENT; MINIMUM STANDARDS.—The department shall:

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

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

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

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

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

(f) Evaluate each program operated by the department or a

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

1. Contracting out for the services provided in the program;

2. Initiating appropriate disciplinary action against all employees whose conduct or performance is deemed to have materially contributed to the program's failure to meet established minimum thresholds;

3. Redesigning the program; or

4. Realigning the program.

(6) COMPREHENSIVE ACCOUNTABILITY REPORT; SUBMITTAL.—No

later than February 1 of each year, the department shall submit the Comprehensive Accountability ~~an annual~~ Report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, and the appropriate substantive and fiscal committees of each house of the Legislature~~, and the Governor, no later than February 1 of each year~~. The Comprehensive Accountability ~~annual~~ Report must contain, at a minimum, for each specific program component: a comprehensive description of the population served by the program; a specific description of the services provided by the program; cost; a comparison of expenditures to federal and state funding; immediate and long-range concerns; and recommendations to maintain, expand, improve, modify, or eliminate each program component so that changes in services lead to enhancement in program quality. The department shall ensure the reliability and validity of the information contained in the report.

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

Section 32. Paragraph (a) of subsection (1) and paragraph (b) of subsection (3) of section 985.644, Florida Statutes, are amended to read:

985.644 Departmental contracting powers; personnel standards and screening.—

(1) The department may contract with the Federal Government, other state departments and agencies, county and municipal governments and agencies, public and private agencies, and private individuals and corporations in carrying out the purposes of, and the responsibilities established in, this chapter.

(a) Each contract entered into by the department for services delivered on an appointment or intermittent basis by a provider that does not have regular custodial responsibility for children, and each contract with a school for ~~before or aftercare~~ services, must ensure that all owners, operators, and personnel who have direct contact with children are subject to level 2 background screening pursuant to chapter 435.

(3)

(b) Certified ~~Except for~~ law enforcement, correctional, and correctional probation officers, pursuant to s. 943.13, are not required to submit to level 2 screenings while employed by a law enforcement agency or correctional facility. ~~to whom s. 943.13(5) applies,~~ The department shall electronically submit to the Department of Law Enforcement:

1. Fingerprint information obtained during the employment screening required by subparagraph (a)1.

2. Fingerprint information for all persons employed by the department, or by a provider under contract with the department, in delinquency facilities, services, or programs if such fingerprint information has not ~~previously~~ been previously ~~electronically~~ submitted pursuant to this section ~~to the Department of Law Enforcement under this paragraph~~.

Section 33. Section 985.6441, Florida Statutes, is created

to read:

985.6441 Health care services.—

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

(a) "Hospital" means a hospital licensed under chapter 395.

(b) "Health care provider" has the same meaning as provided in s. 766.105.

(2) The following reimbursement limitations apply to the compensation of health care providers by the department:

(a) If there is no contract between the department and a hospital or a health care provider providing services at a hospital, payments to such hospital or such health care provider may not exceed 110 percent of the Medicare allowable rate for any health care service provided.

(b) If a contract has been executed between the department and a hospital or a health care provider providing services at a hospital, the department may continue to make payments for health care services at the currently contracted rates through the current term of the contract; however, payments may not exceed 110 percent of the Medicare allowable rate after the current term of the contract expires or after the contract is renewed during the 2013-2014 fiscal year.

(c) Payments may not exceed 110 percent of the Medicare allowable rate under a contract executed on or after July 1, 2014, between the department and a hospital or a health care provider providing services at a hospital.

(d) Notwithstanding paragraphs (a)-(c), the department may pay up to 125 percent of the Medicare allowable rate for health care services at a hospital that demonstrates or has demonstrated through hospital-audited financial data a negative

operating margin for the previous fiscal year to the Agency for Health Care Administration.

(e) The department may execute a contract for health care services at a hospital for rates other than rates based on a percentage of the Medicare allowable rate.

Section 34. Section 985.66, Florida Statutes, is amended to read:

985.66 Juvenile justice training ~~academies~~; staff development and training; Juvenile Justice Training Trust Fund.—

(1) LEGISLATIVE PURPOSE.—In order to enable the state to provide a systematic approach to staff development and training for judges, state attorneys, public defenders, law enforcement officers, school district personnel, and juvenile justice program staff which meets ~~that will meet~~ the needs of such persons in the ~~their~~ discharge of their duties while at the same time meeting the requirements for the American Correction Association accreditation by the Commission on Accreditation for Corrections, it is the purpose of the Legislature to require the department to establish, maintain, and oversee the operation of juvenile justice training programs and courses ~~academies~~ in the state. The purpose of the Legislature in establishing staff development and training programs is to provide employees of the department or any private or public entity or contract providers who provide services or care for youth under the responsibility of the department with the knowledge and skills to appropriately interact with youth and provide such care ~~foster better staff morale and reduce mistreatment and aggressive and abusive behavior in delinquency programs~~; to positively impact the recidivism of children in the juvenile justice system; and to

afford greater protection of the public through an improved level of services delivered by a professionally trained juvenile justice program staff to children who are alleged to be or who have been found to be delinquent.

(2) STAFF DEVELOPMENT AND TRAINING.—The department shall:

(a) Designate the number and location of the training programs and courses ~~academies~~; assess, design, develop, implement, evaluate, maintain, and update the curriculum to be used in the training of juvenile justice ~~program~~ staff; establish timeframes for participation in and completion of training by juvenile justice ~~program~~ staff; develop, implement, score, analyze, maintain, and update job-related examinations; develop, implement, analyze, and update the types and frequencies of evaluations of the training programs, courses, and instructors ~~academies~~; and manage ~~approve, modify, or disapprove~~ the budget and contracts for all the training deliverables ~~academies, and the contractor to be selected to organize and operate the training academies and to provide the training curriculum~~.

(b) Establish uniform minimum job-related preservice and inservice training courses and examinations for juvenile justice ~~program~~ staff.

(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.

(d) Enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as necessary in the execution of the powers of the department or the performance of its duties.

(3) JUVENILE JUSTICE TRAINING PROGRAM.—The department shall establish a certifiable program for juvenile justice training pursuant to this section~~,~~ and all department program staff. ~~and~~ Providers who deliver direct care services pursuant to contract with the department shall ~~be required to~~ participate in and successfully complete the department-approved program of training pertinent to their areas of responsibility. Judges, state attorneys, ~~and~~ public defenders, law enforcement officers, ~~and~~ school district personnel, and employees of contract providers who provide services or care for youth under the responsibility of the department may participate in such a training program. For ~~the~~ juvenile justice ~~program~~ staff, ~~the department shall,~~ based on a job-task analysis:

(a) The department shall design, implement, maintain, evaluate, and revise a basic training program, including a competency-based examination, for the purpose of providing minimum employment training qualifications for all juvenile justice personnel. All program staff of the department and providers who deliver direct-care services who are hired after October 1, 1999, shall, at a ~~must meet the following~~ minimum ~~requirements~~:

1. Be at least 19 years of age.

2. Be a high school graduate or its equivalent, as determined by the department.

3. Not have been convicted of any felony or a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States. A ~~Any~~ person who, after September 30, 1999, pleads guilty or nolo contendere to or is found guilty of any felony or a misdemeanor involving perjury or false statement is not eligible for employment, notwithstanding suspension of sentence or withholding of adjudication. Notwithstanding this subparagraph, a ~~any~~ person who pled nolo contendere to a misdemeanor involving a false statement before October 1, 1999, and ~~who~~ has had such record of that plea sealed or expunged is not ineligible for employment for that reason.

4. Abide by ~~all the provisions of~~ s. 985.644(1) regarding fingerprinting, ~~and~~ background investigations, and other screening requirements ~~for personnel~~.

5. Execute and submit to the department an affidavit-of-application form, approved ~~adopted~~ by the department, attesting to his or her compliance with subparagraphs 1.-4. The affidavit must be executed under oath and constitutes an official statement under s. 837.06. The affidavit must include a conspicuous statement ~~language~~ that the intentional false execution of the affidavit constitutes a misdemeanor of the second degree. The employing agency shall retain the affidavit.

(b) The department shall 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,

evaluate, and revise a career development training program, including a competency-based examination for each training course. Career development courses are intended to prepare personnel for promotion.

(d) The department is encouraged to design, implement, maintain, evaluate, and revise juvenile justice training courses, or to enter into contracts for such training courses, that are intended to provide for the safety and well-being of both citizens and juvenile offenders.

(4) JUVENILE JUSTICE TRAINING TRUST FUND.—

(a) There is created within the State Treasury a Juvenile Justice Training Trust Fund to be used by the department for the purpose of funding the development and updating of a job-task analysis of juvenile justice personnel; the development, implementation, and updating of job-related training courses and examinations; and the cost of juvenile justice training courses.

(b) One dollar from every noncriminal traffic infraction collected pursuant to ss. 318.14(10)(b) and 318.18 shall be deposited into the Juvenile Justice Training Trust Fund.

(c) In addition to the funds generated by paragraph (b), the trust fund may receive funds from any other public or 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.

~~(5) ESTABLISHMENT OF JUVENILE JUSTICE TRAINING ACADEMIES.— The number, location, and establishment of juvenile justice training academies shall be determined by the department.~~

(5)~~(6)~~ SCHOLARSHIPS AND STIPENDS.—The department shall

establish criteria to award scholarships or stipends to qualified juvenile justice personnel who are residents of the state and ~~who~~ want to pursue a bachelor's or associate in arts degree in juvenile justice or a related field. The department shall administer ~~handle the administration of~~ the scholarship or stipend. The Department of Education shall manage ~~handle~~ the notes issued for the payment of the scholarships or stipends. All scholarship and stipend awards shall be paid from the Juvenile Justice Training Trust Fund upon vouchers approved by the Department of Education and properly certified by the Chief Financial Officer. Before ~~Prior to~~ the award of a scholarship or stipend, the juvenile justice employee must agree in writing to practice her or his profession in juvenile justice or a related field for 1 month for each month of grant or to repay the full amount of the scholarship or stipend together with interest at the rate of 5 percent per annum over a period of up to ~~not to exceed~~ 10 years. Repayment is ~~shall be made~~ payable to the state for deposit into the Juvenile Justice Training Trust Fund.

(6)~~(7)~~ PARTICIPATION OF CERTAIN PROGRAMS IN THE STATE RISK MANAGEMENT TRUST FUND.—Pursuant to s. 284.30, the Division of Risk Management of the Department of Financial Services is authorized to insure a private agency, individual, or corporation operating a state-owned training school under a contract to carry out the purposes and responsibilities of any program of the department. The coverage authorized under this subsection is subject to ~~herein shall be under~~ the same general terms and conditions as the coverage afforded the department ~~is insured for its responsibilities~~ under chapter 284.

Section 35. Subsection (5) of section 985.664, Florida

Statutes, is amended to read:

985.664 Juvenile justice circuit advisory boards.—

(5) ~~(a) To form the initial juvenile justice circuit advisory board, the Secretary of Juvenile Justice, in consultation with the juvenile justice county councils in existence on October 1, 2013, shall appoint the chair of the board, who must meet the board membership requirements in subsection (4). Within 45 days after being appointed, the chair shall appoint the remaining members to the juvenile justice circuit advisory board and submit the appointments to the department for approval.~~

~~(b) Thereafter,~~ When a vacancy in the office of the chair occurs, ~~the Secretary of Juvenile Justice, in consultation with~~ the juvenile justice circuit advisory board~~,~~ shall appoint a new chair, who must meet the board membership requirements in subsection (4). The chair shall appoint members to vacant seats within 45 days after the vacancy and submit the appointments to the department for approval. The chair serves at the pleasure of the Secretary of Juvenile Justice.

Section 36. Subsections (1) and (4) of section 985.672, Florida Statutes, are amended to read:

985.672 Direct-support organization; definition; use of property; board of directors; audit.—

(1) DEFINITION.—As used in this section, the term "direct-support organization" means an organization whose sole purpose is to support the juvenile justice system and which is:

(a) A corporation not-for-profit incorporated under chapter 617 and ~~which is~~ approved by the Department of State;

(b) Organized and operated to conduct programs and

activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other ~~property,~~ real or personal property; and to make expenditures to or for the direct or indirect benefit of the Department of Juvenile Justice or the juvenile justice system operated by a county commission or a circuit board;

(c) Determined by the Department of Juvenile Justice to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with the adopted goals and mission of the Department of Juvenile Justice.

Expenditures of the organization shall be ~~expressly~~ used for the prevention and amelioration of ~~to prevent and ameliorate~~ juvenile delinquency. Such funds ~~The expenditures of the direct-support organization~~ may not be used for the purpose of lobbying as defined in s. 11.045.

(4) USE OF PROPERTY.—The department may allow ~~permit~~, without charge, appropriate use of fixed property, ~~and~~ facilities, and personnel services of the juvenile justice system by the direct-support organization, subject to the provisions of this section. For the purposes of this subsection, the term "personnel services" includes full-time or part-time personnel as well as payroll processing services.

(a) The department may prescribe any condition with which the direct-support organization must comply in order to use fixed property or facilities of the juvenile justice system.

(b) The department may not permit the use of any fixed

property or facilities of the juvenile justice system by the direct-support organization if it does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

(c) The department shall adopt rules prescribing the procedures by which the direct-support organization is governed and any conditions with which a direct-support organization must comply to use property or facilities of the department.

Section 37. Section 985.682, Florida Statutes, is amended to read:

985.682 Siting of facilities~~; study; criteria~~.—

~~(1) The department is directed to conduct or contract for a statewide comprehensive study to determine current and future needs for all types of facilities for children committed to the custody, care, or supervision of the department under this chapter.~~

~~(2) The study shall assess, rank, and designate appropriate sites, and shall be reflective of the different purposes and uses for all facilities, based upon the following criteria:~~

~~(a) Current and future estimates of children originating from each county;~~

~~(b) Current and future estimates of types of delinquent acts committed in each county;~~

~~(c) Geographic location of existing facilities;~~

~~(d) Availability of personnel within the local labor market;~~

~~(e) Current capacity of facilities in the area;~~

~~(f) Total usable and developable acreage of various sites~~

~~based upon the use and purpose of the facility;~~

~~(g) Accessibility of each site to existing utility, transportation, law enforcement, health care, fire protection, refuse collection, water, and sewage disposal services;~~

~~(h) Susceptibility of each site to flooding hazards or other adverse natural environmental consequences;~~

~~(i) Site location in relation to desirable and undesirable proximity to other public facilities, including schools;~~

~~(j) Patterns of residential growth and projected population growth; and~~

~~(k) Such other criteria as the department, in conjunction with local governments, deems appropriate.~~

~~(3) The department shall recommend certification of the study by the Governor and Cabinet within 2 months after its receipt.~~

~~(4) Upon certification of the study by the Governor and Cabinet, the department shall notify those counties designated as being in need of a facility.~~

(1)~~(5)~~ When the department or a contracted provider proposes a site for a juvenile justice facility, the department or provider shall request that the local government having jurisdiction over such proposed site determine whether ~~or not~~ the proposed site is appropriate for public use under local government comprehensive plans, local land use ordinances, local zoning ordinances or regulations, and other local ordinances in effect at the time of such request. If no such determination is made within 90 days after the request, it is ~~shall be~~ presumed that the proposed site is in compliance with such plans, ordinances, or regulations.

(2)~~(6)~~ If the local government determines within 90 days after the request that construction of a facility on the proposed site does not comply with any such plan, ordinance, or regulation, the department may request a modification of such plan, ordinance, or regulation without having an ownership interest in such property. For the purposes of this section, modification includes, but is not limited to, a variance, rezoning, special exception, or any other action of the local government having jurisdiction over the proposed site which would authorize siting of a facility.

(3)~~(7)~~ Upon receipt of a request for modification from the department, the local government may recommend and hold a public hearing on the request for modification in the same manner as for a rezoning as provided under the appropriate special or local law or ordinance, except that such proceeding shall be recorded by tape or by a certified court reporter and made available for transcription at the expense of any interested party.

(4)~~(8)~~ If ~~When~~ the department requests such a modification and it is denied by the local government, the local government or the department shall initiate the dispute resolution process established under s. 186.509 to reconcile differences on the siting of correctional facilities between the department, local governments, and private citizens. If the regional planning council has not established a dispute resolution process pursuant to s. 186.509, the department shall establish, by rule, procedures for dispute resolution. The dispute resolution process must ~~shall~~ require the parties to commence meetings to reconcile their differences. If the parties fail to resolve

their differences within 30 days after the denial, they ~~the parties~~ shall engage in voluntary mediation or a similar process. If the parties fail to resolve their differences by mediation within 60 days after the denial, or if no action is taken on the department's request within 90 days after the request, the department must appeal the decision of the local government on the requested modification of local plans, ordinances, or regulations to the Governor and Cabinet. A ~~Any~~ dispute resolution process initiated under this section must conform to the time limitations set forth in this subsection ~~herein~~. However, upon agreement of all parties, the time limits may be extended, but ~~in no event may~~ the dispute resolution process may not extend beyond ~~over~~ 180 days.

(5)~~(9)~~ The Governor and Cabinet shall consider the following when determining whether to grant the appeal from the decision of the local government on the requested modification:

(a) The record of the proceedings before the local government.

(b) Reports and studies by any other agency relating to matters within the jurisdiction of such agency which may be potentially affected by the proposed site.

(c) ~~The statewide study, as established in subsection (1); other~~ Existing studies; reports and information maintained by the department as the Governor and Cabinet may request addressing the feasibility and availability of alternative sites in the general area; and the need for a facility in the area based on the average number of petitions, commitments, and transfers into the criminal court from the county to state facilities for the 3 most recent ~~3~~ calendar years.

(6)~~(10)~~ The Governor and Cabinet, upon determining that the local government has not recommended a ~~no~~ feasible alternative site and that the interests of the state in providing facilities outweigh the concerns of the local government, shall authorize construction and operation of a facility on the proposed site notwithstanding any local plan, ordinance, or regulation.

(7)~~(11)~~ The Governor and Cabinet may adopt rules ~~of procedure~~ to govern these proceedings in accordance with ~~the provisions of~~ s. 120.54.

(8)~~(12)~~ Actions taken by the department or the Governor and Cabinet pursuant to this section are not ~~shall not be~~ subject to ~~the provisions of~~ ss. 120.56, 120.569, and 120.57. The decision by the Governor and Cabinet is ~~shall be~~ subject to judicial review pursuant to s. 120.68 in the District Court of Appeal, First District.

(9)~~(13)~~ All other departments and agencies of the state shall cooperate fully with the department to accomplish the siting of facilities for juvenile offenders.

(10)~~(14)~~ It is the intent of the Legislature to expedite the siting of, acquisition of land for, and construction by the Department of Juvenile Justice of state juvenile justice facilities operated by the department or a private vendor under contract with the department. Other agencies shall cooperate with the department and expeditiously fulfill their responsibilities to avoid unnecessary delay in the siting of, acquisition of land for, and construction of state juvenile justice facilities. This section and all other laws of the state shall be construed to accomplish this intent. This section takes ~~shall take~~ precedence over any other law ~~to the contrary~~.

(11)~~(15)~~(a) The department shall acquire land and erect juvenile justice facilities necessary to accommodate children committed to the custody, care, or supervision of the department, and shall make additional alterations to facilities to accommodate any increase in the number of children. The department shall establish adequate accommodations for staff of the department who are required to reside continuously within the facilities.

(b) Notwithstanding s. 255.25(1) and contingent upon available funds, the department may enter into lease-purchase agreements to provide juvenile justice facilities for housing committed youths~~, contingent upon available funds~~. The facilities provided through such agreements must meet the program plan and specifications of the department. The department may enter into such lease agreements with private corporations and other governmental entities. However, with the exception of contracts entered into with other governmental entities, and notwithstanding s. 255.25(3)(a), a lease agreement may not be entered into except upon advertisement for the receipt of competitive bids and award to the lowest and best bidder ~~except if contracting with other governmental entities~~.

(c) A lease-purchase agreement that is for a term extending beyond the end of a fiscal year is subject to ~~the provisions of~~ s. 216.311.

(12)~~(16)~~(a) Notwithstanding s. 253.025 or s. 287.057, if ~~when~~ the department finds it necessary for timely site acquisition, it may contract, without using the competitive selection procedure, with an appraiser whose name is on the list of approved appraisers maintained by the Division of State Lands

of the Department of Environmental Protection under s. 253.025(6)(b). If ~~When~~ the department directly contracts for appraisal services, it must contract with an approved appraiser who is not employed by the same appraisal firm for review services.

(b) Notwithstanding s. 253.025(6), the department may negotiate and enter into an option contract before an appraisal is obtained. The option contract must state that the final purchase price may not exceed the maximum value allowed by law. The consideration for such an option contract may not exceed 10 percent of the estimate obtained by the department or 10 percent of the value of the parcel, whichever amount is greater.

(c) This subsection applies only to a purchase or acquisition of land for juvenile justice facilities. This subsection does not modify the authority of the Board of Trustees of the Internal Improvement Trust Fund or the Division of State Lands of the Department of Environmental Protection to approve any contract for purchase of state lands as provided by law or to require policies and procedures to obtain clear legal title to parcels purchased for state purposes.

(13) ~~(17)~~ The department may sell, to the best possible advantage, any detached parcels of land belonging to the bodies of land purchased for the state juvenile justice facilities. The department may purchase any parcel of land contiguous with the lands purchased for state juvenile justice facilities.

(14) ~~(18)~~ The department may begin preliminary site preparation and obtain the appropriate permits for the construction of a juvenile justice facility after approval of the lease-purchase agreement or option contract by the Board of

Trustees of the Internal Improvement Trust Fund ~~of the lease purchase agreement or option contract~~ if~~, in~~ the department determines that ~~department's discretion,~~ commencing construction is in the best interests of the state.

(15)~~(19)~~ If ~~Insofar as the provisions of~~ this section is ~~are~~ inconsistent with ~~the provisions of~~ any other general, special, or local law, ~~general, special, or local, the provisions of~~ this section is ~~are~~ controlling. Additionally, the criteria and procedures established under ~~set forth in~~ this section supersede and are in lieu of any review and approval required by s. 380.06.

Section 38. Section 985.69, Florida Statutes, is amended to read:

985.69 Repair and maintenance ~~One-time startup~~ funding for juvenile justice purposes.—Funds from juvenile justice appropriations may be used ~~utilized as one-time startup funding~~ for juvenile justice purposes that include, but are not limited to, remodeling or renovation of existing facilities, construction costs, leasing costs, purchase of equipment and furniture, site development, and other necessary and reasonable costs associated with the repair and maintenance ~~startup~~ of facilities or programs.

Section 39. Section 985.694, Florida Statutes, is repealed.

Section 40. Paragraph (a) of subsection (1) of section 985.701, Florida Statutes, is reordered and amended to read:

985.701 Sexual misconduct prohibited; reporting required; penalties.—

(1)(a)1. As used in this section ~~subsection~~, the term:

c.~~a.~~ "Sexual misconduct" means 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 the department or an employee of a provider under contract with the department.

a.~~b.~~ "Employee" means a ~~includes~~ paid staff member ~~members~~, a volunteer ~~volunteers~~, or an intern ~~and interns~~ who works ~~work~~ in a department program or a program operated by a provider under a contract.

b. "Juvenile offender" means a person of any age who is detained or supervised by, or committed to the custody of, the department.

2. An employee who engages in sexual misconduct with a juvenile offender ~~detained or supervised by, or committed to the custody of, the department~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. An employee may be found guilty of violating this subsection without having committed the crime of sexual battery.

3. The consent of the juvenile offender to any act of sexual misconduct is not a defense to prosecution under this subsection.

4. This subsection does not apply to an employee of the department~~,~~ or ~~an employee~~ of a provider under contract with the department, who:

a. Is legally married to a juvenile offender who is detained or supervised by, or committed to the custody of, the department.

b. Has no reason to believe that the person with whom the employee engaged in sexual misconduct is a juvenile offender ~~detained or supervised by, or committed to the custody of, the department~~.

Section 41. Section 985.702, Florida Statutes, is created to read:

985.702 Willful and malicious neglect of a juvenile offender prohibited; reporting required; penalties.—

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

(a) "Employee" means a paid staff member, volunteer, or intern who works in a department program or a program operated by a provider under a contract with the department.

(b) "Juvenile offender" means a person of any age who is detained by, or committed to the custody of, the department.

(c) "Neglect" means:

1. 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

2. An employee's failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

(2)(a) An employee who willfully and maliciously neglects a juvenile offender without causing great bodily harm, permanent disability, or permanent disfigurement to a juvenile offender, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) An employee who willfully and maliciously neglects a juvenile offender and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to a juvenile offender, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Notwithstanding prosecution, any violation of paragraph (a) or paragraph (b), as determined by the Public Employees Relations Commission, constitutes sufficient cause under s. 110.227 for dismissal from employment with the department, and a person who commits such violation may not again be employed in any capacity in connection with the juvenile justice system.

(3) An employee who witnesses the neglect of a juvenile offender shall immediately report the incident to the department's incident hotline and prepare, date, and sign an independent report that specifically describes the nature of the incident, the location and time of the incident, and the persons involved. The employee shall deliver the report to the employee's supervisor or program director, who must provide copies to the department's inspector general and the circuit juvenile justice manager. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that a violation of subsection (2) has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.

(4)(a) A person who is required to prepare a report under this section and who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree, punishable as

provided in s. 775.082 or s. 775.083.

(b) A person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a report required under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding the neglect of a juvenile offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 42. Paragraphs (c) and (f) of subsection (3) of section 943.0582, Florida Statutes, are amended to read:

943.0582 Prearrest, postarrest, or teen court diversion program expunction.—

(3) The department shall expunge the nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program if that minor:

(c) Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's prearrest or postarrest diversion program, that his or her participation in the program was based on an arrest for a nonviolent misdemeanor, and that he or she has not otherwise been charged by the state attorney with or found to have committed any criminal offense or comparable ordinance violation.

(f) Has never, prior to filing the application for expunction, been charged by the state attorney with or been found to have committed any criminal offense or comparable

ordinance violation.

Section 43. Section 945.75, Florida Statutes, is repealed.

Section 44. Paragraphs (e) through (i) of subsection (2), paragraphs (g) and (k) of subsection (3), paragraph (b) of subsection (5), paragraph (d) of subsection (8), and paragraph (c) of subsection (10) of section 121.0515, Florida Statutes, are amended to read:

121.0515 Special Risk Class.—

(2) MEMBERSHIP.—

~~(e) Effective July 1, 2001, "special risk member" includes any member who is employed as a youth custody officer by the Department of Juvenile Justice and meets the special criteria set forth in paragraph (3)(g).~~

(e)~~(f)~~ Effective October 1, 2005, through June 30, 2008, the member must be employed by a law enforcement agency or medical examiner's office in a forensic discipline and meet the special criteria set forth in paragraph (3)(g) ~~(3)(h)~~.

(f)~~(g)~~ Effective July 1, 2008, the member must be employed by the Department of Law Enforcement in the crime laboratory or by the Division of State Fire Marshal in the forensic laboratory and meet the special criteria set forth in paragraph (3)(h) ~~(3)(i)~~.

(g)~~(h)~~ Effective July 1, 2008, the member must be employed by a local government law enforcement agency or medical examiner's office and meet the special criteria set forth in paragraph (3)(i) ~~(3)(j)~~.

(h)~~(i)~~ Effective August 1, 2008, "special risk member" includes any member who meets the special criteria for continued membership set forth in paragraph (3)(j) ~~(3)(k)~~.

(3) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

~~(g) Effective July 1, 2001, the member must be employed as a youth custody officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the supervised custody, surveillance, control, investigation, apprehension, arrest, and counseling of assigned juveniles within the community;~~

(j) ~~(k)~~ The member must have already qualified for and be actively participating in special risk membership under paragraph (a), paragraph (b), or paragraph (c), must have suffered a qualifying injury as defined in this paragraph, must not be receiving disability retirement benefits as provided in s. 121.091(4), and must satisfy the requirements of this paragraph.

1. The ability to qualify for the class of membership defined in paragraph (2)(h) ~~(2)(i)~~ occurs when two licensed medical physicians, one of whom is a primary treating physician of the member, certify the existence of the physical injury and medical condition that constitute a qualifying injury as defined in this paragraph and that the member has reached maximum medical improvement after August 1, 2008. The certifications from the licensed medical physicians must include, at a minimum, that the injury to the special risk member has resulted in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg; and:

a. That this physical loss or loss of use is total and permanent, except if the loss of use is due to a physical injury

to the member's brain, in which event the loss of use is permanent with at least 75 percent loss of motor function with respect to each arm or leg affected.

b. That this physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her special risk position.

c. That, notwithstanding this physical loss or loss of use, the individual can perform the essential job functions required by the member's new position, as provided in subparagraph 3.

d. That use of artificial limbs is not possible or does not alter the member's ability to perform the essential job functions of the member's position.

e. That the physical loss or loss of use is a direct result of a physical injury and not a result of any mental, psychological, or emotional injury.

2. For the purposes of this paragraph, "qualifying injury" means an injury sustained in the line of duty, as certified by the member's employing agency, by a special risk member that does not result in total and permanent disability as defined in 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 a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg. Notwithstanding any other provision of this section, an injury that would otherwise qualify as a qualifying injury is not considered a qualifying injury if and when the member ceases employment with the employer for whom he or she was providing special risk services on the date the injury occurred.

3. The new position, as described in sub-subparagraph 1.c.,

that is required for qualification as a special risk member under this paragraph is not required to be a position with essential job functions that entitle an individual to special risk membership. Whether a new position as described in sub-subparagraph 1.c. exists and is available to the special risk member is a decision to be made solely by the employer in accordance with its hiring practices and applicable law.

4. This paragraph does not grant or create additional rights for any individual to continued employment or to be hired or rehired by his or her employer that are not already provided within the Florida Statutes, the State Constitution, the Americans with Disabilities Act, if applicable, or any other applicable state or federal law.

(5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

(b) Any member who is a special risk member on July 1, 2008, and who became eligible to participate under paragraph (3)(g) ~~(3)(h)~~ but fails to meet the criteria for Special Risk Class membership established by paragraph (3)(h) ~~(3)(i)~~ or paragraph (3)(i) ~~(3)(j)~~ shall have his or her special risk designation removed and thereafter shall be a Regular Class member and earn only Regular Class membership credit. The department may review the special risk designation of members to determine whether or not those members continue to meet the criteria for Special Risk Class membership.

(8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

(d) Notwithstanding any other provision of this subsection, this subsection does not apply to any special risk member who qualifies for continued membership pursuant to paragraph (3)(j) ~~(3)(k)~~.

(10) CREDIT FOR UPGRADED SERVICE.—

(c) Any member of the Special Risk Class who has earned creditable service through June 30, 2008, in another membership class of the Florida Retirement System in a position with the Department of Law Enforcement or the Division of State Fire Marshal and became covered by the Special Risk Class as described in paragraph (3)(h) ~~(3)(i)~~, or with a local government law enforcement agency or medical examiner's office and became covered by the Special Risk Class as described in paragraph (3)(i) ~~(3)(j)~~, which service is within the purview of the Special Risk Class, and is employed in such position on or after July 1, 2008, may purchase additional retirement credit to upgrade such service to Special Risk Class service, to the extent of the percentages of the member's average final compensation provided in s. 121.091(1)(a)2. The cost for such credit must be an amount representing the actuarial accrued liability for the difference in accrual value during the affected period of service. The cost shall be calculated using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System Pension Plan liabilities in the most recent actuarial valuation. The division shall ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. The cost must be paid immediately upon notification by the division. The local government employer may purchase the upgraded service credit on behalf of the member if the member has been employed by that employer for at least 3 years.

Section 45. Subsection (5) of section 985.045, Florida Statutes, is amended to read:

985.045 Court records.—

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

Section 46. Section 985.721, Florida Statutes, is amended to read:

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

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

(2) Any residential commitment facility described in s. 985.03(41) ~~s. 985.03(46)~~, maintained for the custody, treatment, punishment, or rehabilitation of children found to have committed delinquent acts or violations of law; or

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

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

Section 47. This act shall take effect July 1, 2014.