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HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: CS/HB 1425
RELATING TO: Law Enforcement
SPONSOR(S): Council For Healthy Communities and Representatives Bowen and Spratt
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY (HCC) YEAS 7 NAYS 0
- (2) CRIMINAL JUSTICE APPROPRIATIONS YEAS 12 NAYS 0
- (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 14 NAYS 0
- (4)
- (5)

I. SUMMARY:

This Council Substitute amends s. 943.031, F.S., to expand the Florida Violent Crime Council to the Florida Violent Crime and Drug Control Council and expands the functions of the council to include drug control strategies. This Council Substitute revises membership; provides for grants to law enforcement agencies; provides statutory limits on funding of investigative efforts by the council; and provides for periodic reporting by regional council coordination teams, including the results of any investigations funded by the council and allows meetings by teleconference call by the Victim and Witness Protection Review Committee.

The Council Substitute amends s.943.042, F.S., renaming the account the "Violent Crime Investigative Emergency Account" providing that the account is to be used to provide emergency supplemental or matching funding to drug control or money laundering efforts. The Council Substitute provides that FDLE must adopt rules for the disbursement of account funds, and establishes a \$100,000 maximum limit on single investigation disbursements and a \$200,000 maximum for single agency disbursements.

CS/HB 1425 amends ss. 943.0585 and 943.059, F.S., prohibiting a court from expunging or sealing a criminal history record of a person convicted of certain enumerated offenses.

This Council Substitute amends s. 943.325, F.S., to expand the collection of blood samples for DNA analysis to additionally include other biological samples approved by FDLE. The bill amends s. 943.325(2), F.S., to provide that blood withdrawal for DNA analysis be performed in a medically approved manner using a collection kit provided by or accepted by FDLE; collection of other approved biological specimens must be performed using a collection kit provided by or accepted by FDLE; in a manner approved by FDLE, directed in the kit, or as otherwise acceptable by FDLE. CS/HB 1425 amends s. 943.325(3), F.S., providing that current requirements for drawing blood from convicted persons and the securing and transmitting of those samples to FDLE additionally applies to other approved biological specimens.

This Council Substitute amends s. 938.01, F.S., to provide that court cost collections (Additional Court Cost Clearing Trust Fund) shall be directed to the Department of Law Enforcement instead of the Department of Community Affairs. The bill amends s. 943.325, F.S., to provide that FDLE is authorized to disburse funds from the FDLE Operating Trust Fund sums necessary to match federal funds. The Council Substitute amends s. 943.325, F.S., to provide for the transfer of the Criminal Justice Program from the Department of Community Affairs to the Department of Law Enforcement.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Violent Crime Council

Membership and Duties: Under the provisions of s. 943.031, F.S., the twelve-member Violent Crime Council within the Florida Department of Law Enforcement (FDLE) includes state and local representation and is charged with making recommendations regarding the development and implementation of violent crime initiatives. Six members of the council are standing members by virtue of their positions and six members are appointed by the Governor, consisting of two sheriffs, two chiefs of police, one medical examiner and one state attorney. Current law does not specifically provide for designates of governor-appointed members to participate on the council. Members of the council serve without compensation and are entitled to reimbursement for per diem and travel expenses.

Statutory duties of the Violent Crime Council include, in part, the following responsibilities:

- Establishing a program which provides grants to criminal justice agencies for violent crime prevention and investigative programs.
- Identifying methods to prevent violent crime.
- Enhancing criminal justice programs which address violent crime.
- Developing and promoting crime prevention services and educational programs, including enhanced victim and witness counseling services, and a rewards program for the apprehension and conviction of violent criminals.
- Creating a criminal justice research and behavioral science center to provide support to local law enforcement agencies.
- Advising the executive director of FDLE on the creation of regional violent crime investigation coordinating teams.

Violent Crime Emergency Account: The Violent Crime Emergency Account is established within the FDLE Operating Trust Fund under s. 943.042, F.S., and is used, in part, to provide emergency supplemental funds to state and local law enforcement agencies which are involved in complex and lengthy violent crime investigations. The Council is required to develop criteria for the disbursement of funds from the Violent Crime Emergency Account within FDLE's operating trust fund and the council must review and approve all requests for disbursement of funds from the account. FDLE rules must address procedures for law enforcement agencies to use when applying for funds, and the rules must also address guidelines which establish limits on the amount that may be disbursed on a single investigation. Current law does not provide a specific monetary figure for the maximum amount that may be disbursed under this section.

Victim Witness Protection Review Committee: Section 943.031(6), F.S., creates the Victim and Witness Protection Review Committee within the Florida Violent Crime Council and designates membership and duties, including developing criteria for disbursing funds to reimburse law enforcement agencies for costs associated with providing victim and witness protective or temporary relocation services.

Violent Crime Council Designation as a Criminal Justice Agency: Under 943.031(7)(b), F.S., the Florida Violent Crime Council is designated a "criminal justice agency" as provided in s. 119.011, F.S. This section further provides that only those portions of Violent Crime Council meetings in which matters related to active criminal investigations or intelligence are presented may be closed to the public. Records generated from these closed meetings are exempt from disclosure under the Public Records Law, s. 119.07(1), and s. 24(a), Article I of the Florida Constitution.

Sealed and Expunged Criminal History Records

Florida courts have jurisdiction over the maintenance, expunction and correction of judicial records containing state criminal history information. An adult or minor who complies with the provisions of ss. 943.0585 and 943.059, F.S., may seek a court order to have a criminal justice agency seal or expunge that person's criminal history record.

Any criminal history record ordered *expunged* by the court must be physically destroyed by a criminal justice agency having custody of it, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained in all cases. However, such record retained by FDLE is exempt from disclosure under the Public Records Law, s. 119.07(1), F.S., and s. 24(a), Article I, of the Florida Constitution. Once expunged, such record may not subsequently be disclosed without a court order.

A *sealed* criminal history record is also confidential and exempt from disclosure. Sealed records are available only to the person who is the subject of the record, the subject's attorney, criminal justice agencies, or specific entities where the person is seeking employment, admission, or license such as The Florida Bar, Department of Children & Family Services, or Office of Teacher Certification, Staff Development, and Professional Practices of the Department of Education - as provided in s. 943.059(4), F.S.

A criminal history record may **not** be expunged or sealed if it relates to the following offenses:

- Sexual battery, as defined in Chapter 794, F.S.
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age, as defined in s. 800.04, F.S.
- Communications fraud, as defined in s. 817.034, F.S.
- Sexual performance by a child, as defined in s. 827.071, F.S.

- Offenses by public officers and employers, as defined in Chapter 839, F.S.
- Narcotics trafficking, as defined in s. 893.135 F.S.
- Offenses designated as “dangerous crimes,”¹ as defined in s. 907.041, F.S.

A person who has had a criminal history record expunged or sealed may legally deny or fail to acknowledge the arrests that are the subject of the expunged or sealed record, unless the subject is seeking employment with the agencies provided under ss. 943.0585(4)(a) and 943.059(4)(a), F.S.

A person is eligible to have a criminal history record *expunged* if they have no criminal convictions on their record. A record may be expunged if the charge was dismissed or nolle prosequied by the state attorney or was dismissed by the court -- provided that the charge is not one of the enumerated offenses listed above. A person is eligible to have a criminal history record *sealed* if they have no criminal convictions on their record. If adjudication of guilt was withheld, the person is eligible to have a record sealed, provided that the charge is not one of the enumerated offenses listed above.

DNA Collection by the Florida Department of Law Enforcement

Currently, under s. 943.325, F.S., a convicted felon is required to submit two blood specimens to a FDLE designated testing facility as directed by the department, if that person² is convicted of any offense or attempted offense specified as follows:

- Chapter 794 sexual battery;
- Chapter 800 lewdness and indecent exposure;
- Section 782.04 murder;
- Section 784.045 aggravated battery;
- Section 810.02 burglary;
- Section 812.133 carjacking;
- Section 812.135 home invasion robbery; and who is either:

1. Still incarcerated, or
2. Is no longer incarcerated but is within the confines of the legal state boundaries and is on probation, parole, community control, conditional release, control release, or any other court-ordered supervision.

Section 943.325, F.S., requires the court to include in the judgment of conviction an order stating that blood specimens are required to be drawn by the appropriate agency in a manner consistent with the section.

The section provides the mechanism to pay for the cost of drawing and testing the blood specimens. If the judgment of conviction places the person on probation, community control, or any other court-ordered supervision, the court shall order the person to submit to the drawing of the

¹A “dangerous crime,” as defined in s. 907.041 (4)(a) means the following: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult; hijacking; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741. 28 and; attempting or conspiring to commit any such crime, and home invasion robbery.

² A “person” includes both juveniles and adults committed to or under the supervision of the Department of Corrections, the Department of Juvenile Justice or committed to a county jail, s. 943.325(1)(a)2(b), F.S.

blood specimens as a condition of the supervision. If a convicted person is in custody, the drawing of blood must be performed prior to release. Under s. 943.325(10)(e), F.S., a state or local law enforcement or correctional agency may use reasonable force when necessary to require a person to submit to the withdrawal of blood pursuant to the provisions of this section.

The Florida Legislature created the DNA Offender Database in 1989, and since that time, FDLE has entered samples collected from offenders convicted of the specified offenses under s. 943.325(1)(a), F.S. There are currently over 75,000 individual criminals whose DNA profiles have been compiled in the DNA database. FDLE collects and analyzes blood specimens from known criminals and then makes comparisons to DNA profiles that result from the testing of blood and other biological evidence collected from crime scenes. Through the use of the DNA Offender Database, these comparisons help to solve crimes by matching suspects and victims to questioned serological samples.

The method of DNA analysis that is now being used in the FDLE crime laboratory system and throughout the country is a technique known as STR or Short Tandem Repeats. This technology can be used for analyzing very small or degraded samples and gives very high discrimination probabilities (the ability to tell individuals apart). This new technology allows the DNA database to utilize samples other than blood, including buccal (oral) swabs, which are taken from the inside of a person's cheek.

Case law shows that both federal and state courts have concluded that statutes which authorize the collection of blood specimens to assist law enforcement is not penal in nature, Gilbert v. Peters, 55F.3d237, 238-239(7th Cir. 1995). In Sanders v. Coman, 864 F. Supp. 496, 500 (E.D.N.C. 1994), the court found that ". . . the DNA sample procedure, is a matter of institutional security and discipline. Therefore, the actual force used does not constitute cruel and unusual punishment simply because it caused pain to the inmates involved." The Sanders court observed that, under the Eighth Amendment, correctional officers may not "use more force than is reasonably necessary under the circumstances."

Additional Court Cost Clearing Trust Fund and Transfer of the Criminal Justice Program from the Department of Community Affairs to FDLE

Section 938.01, F.S., provides for the assessment of certain costs against every person convicted for violation of a state penal or criminal statute or convicted for violation of a municipal ordinance. In addition, there is an assessment of certain costs from every bond estreature or forfeited bail. These assessments are collected by the courts and remitted to the department of Revenue, which, in accordance with its rules, deposits them in the Additional Court Cost Clearing Trust Fund. Those assessments are specifically earmarked for the FDLE and the DCA, and are deposited and distributed according to specifications in s. 938.01, F.S.

This section specifies that several of the disbursements from the Operating Trust Fund are to be disbursed to the "Bureau of Public Safety Management of the Department of Community Affairs." Section 943.25(1), F.S., provides, in part, that the Department of Community Affairs may approve, for disbursement from the Operating Trust Fund, those appropriated sums necessary and required by the state for grant matching, implementing, administering, evaluating, and qualifying for such federal funds.

Prior to July 1, 2000, the Criminal Justice Program was administered by the Department of Community Affairs (DCA). The General Appropriations Act and the Appropriations Implementing Bill enacted during the 2000 legislative session transferred this function to the Florida Department of Law Enforcement (FDLE).

C. EFFECT OF PROPOSED CHANGES:

Violent Crime Council

Section 1:

This Council Substitute expands the functions of the Violent Crime Council to allow it to assume a role in promoting Florida's drug control strategies in addition to violent crime strategies. This section amends s. 943.031, F.S., to rename the Florida Violent Crime Council as the Florida Violent Crime and Drug Control Council, and provides that drug control efforts by state and local law enforcement agencies, including investigations of illicit money laundering activities, must also be addressed by the council.

The Council Substitute expands the council's membership to include the director of the Office of Drug Control within the Executive Office of the Governor, or a designate, and the Comptroller, or a designate as standing members of the council. It further amends the section to allow the appointment of certain designees, allows designees to vote on issues before the council, and allows designees to receive reimbursement for per diem and travel expenses.

This Council Substitute provides that the council may advise the executive director of the Department of Law Enforcement regarding the feasibility of establishing programs to provide grants to law enforcement agencies for drug control and illicit money laundering investigative efforts or task force efforts, that, as determined by the council, significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent a significant illicit money laundering effort or that otherwise significantly supports statewide strategies developed by the Statewide Drug Policy Advisory Council. In addition, the Council Substitute would allow the Violent Crime Council to advise the executive director on providing funding for multi-agency or statewide drug control or illicit money laundering investigative efforts which cannot be reasonably funded completely by alternative sources.

This Council Substitute deletes a current provision that allows the Violent Crime Council to advise the executive director on the creation of a criminal justice research and behavioral science center. In addition to identifying methods to prevent violent crime, this Council Substitute enables the Violent Crime Council to identify methods to enhance drug control or illicit money laundering investigative efforts that contribute to the goal of reducing drug-related crime.

The Council Substitute provides for the Violent Crime Council to receive periodic reports from regional violent crime investigation and statewide drug control strategy implementation coordinating teams reference violent crime trends or the statewide drug strategy. These reports must include the results of drug control and money laundering investigations that are partially funded by the council.

CS/HB 1425 provides for the council to maintain and use criteria for disbursing funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within FDLE's Operating Trust Fund or other appropriations. Further, the Council Substitute specifies that funds available from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the department's operating trust fund are earmarked for use to the extent that funds are not available from other appropriations. The purpose for which these funds are earmarked is not specified. The council must review and approve all requests for disbursement of funds from the account and from other appropriations provided to FDLE in the General Appropriations Act.

This Council Substitute amends s. 943.031(6), F.S., to allow the Victim and Witness Protection Review Committee within the Violent Crime Council to conduct meetings by teleconference or conference phone calls when a delay for reimbursement would adversely affect the requesting agency's ability to provide protection services.

Section 2:

Amends s. 943.17, F.S., to reflect the new name of the council as provided in Section 1 of the bill.

Section 3:

Amends s. 943.042, F.S., to change the name of the Violent Crime Emergency Account to the "Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account." The bill expands the use of funds from the account to include supplemental or matching funding to multiagency or statewide drug control or illicit money laundering investigative efforts that significantly contribute to the state's goal of reducing drug-related crime, that represent a significant money laundering investigative effort, or otherwise support statewide strategies established under s. 397.333, F.S.

The Council Substitute provides that the FDLE, in consultation with the council, must maintain rules which address guidelines establishing a **\$100,000 maximum limit** on the amount that may be disbursed on a single investigation and a **\$200,000 maximum limit on funds that may be provided to a single agency during the agency's fiscal year**. Current law does not set a specific dollar figure for the amount that may be disbursed on a single investigation or to a single agency.

This Council Substitute further amends s. 943.042, F.S., providing that FDLE shall adopt rules with regard to the eligibility for funding of drug control or illicit money laundering investigative efforts or task force efforts and those rules shall address: criteria for funding eligibility; criteria for determining if the state's goals and strategies were achieved; limitations on the amount disbursed; procedures for applying for funds, including certain requirements necessary for matching funding; a method of accounting for funds spent; requirements for recipient agencies to report on the performance of investigative efforts, including arrests, prosecutions, property or currency seizures made, and the impact on criminal enterprises.

The Council Substitute provides a mechanism for the council to demand a full or partial return of any funds that are not used in a manner authorized by the council and provides for termination or limitation of future funding.

Sealed and Expunged Criminal History Records

Section 4 and Section 5:

The Council Substitute expands the list of enumerated offenses that make a person ineligible to have his or her criminal record expunged or sealed. The Council Substitute amends ss. 943.0585 and 943.059, F.S., to provide that a person who has been found guilty of or pled guilty or nolo contendere to any violation enumerated in the following sections of the Florida Statutes, is not eligible for the court ordered expunction or sealing of a criminal history record:

- luring or enticing a child, as defined by s. 787.025, F.S
- procuring a person under the age of 18 for prostitution, as defined by s. 796.03, F.S.
- lewd or lascivious offenses against an elderly person or disabled adult, as defined by s. 825.1025, F.S.

- showing obscene material to a minor, as defined in s. 847.0133, F.S.
- computer pornography, as defined in s. 847.0135, F.S.
- selling or buying of minors, as defined in s. 847.0145, F.S.

Section 943.0585(2)(a), F.S., provides that, prior to petitioning the court to expunge a criminal history record, a person seeking to have a record expunged must obtain, and submit to the Florida Department of Law Enforcement, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that the criminal history record does not relate to violations of specific statutes. This Council Substitute expands this list of statutes to include the sections of Florida statutes listed above.

According to FDLE, the addition of certain sex offenses is consistent with public policy. Currently, sexual predators and offenders must register and communities must be notified of their offenses, therefore it is contradictory to give these offenders the opportunity to have their criminal history files sealed or expunged.

DNA Collection by the Florida Department of Law Enforcement

Section 6:

The Council Substitute amends s. 943.325, F.S., to expand the authority to collect blood samples for DNA analysis to include other biological specimens approved by the Department of Law Enforcement. CS/HB 1425 further clarifies that DNA analysis applies to convicted persons who have never been incarcerated yet are within the confines of the legal state boundaries and are on probation, community control, parole, conditional release, control release, or any other court-ordered supervision.

FDLE reports that these buccal or oral swab samples can be obtained at less cost to the collecting agency, since they do not require the service of a phlebotomist to draw the blood. These samples can be collected easily, quickly, and with minimal discomfort to the subject. The swabs are suitable for the DNA analysis and will also survive long term storage.

The Council Substitute amends s. 943.325(2), F.S., to provide that the withdrawal of blood for DNA analysis must be performed in a medically approved manner using a collection kit provided by, or accepted by, FDLE. It provides that the withdrawal of blood may be performed by or under the supervision of, in addition to medical personnel, other trained or competent personnel. Further provisions under this section stipulate that the collection of other approved biological specimens must be performed by a person using a collection kit that is provided by, or accepted by FDLE, in a manner approved by FDLE, as directed in the kit, or as otherwise found to be acceptable by the department.

This Council Substitute amends s. 943.325(3), F.S., providing that current requirements for the drawing of blood from a convicted person and the securing and transmitting of that sample to FDLE, shall also apply to other approved biological specimens.

This Council Substitute clarifies that FDLE may, in addition to the specimens required for submission under this section, receive and utilize other blood specimens or other approved biological specimens.

The provisions of this Council Substitute allow FDLE to store other approved biological specimen samples and to adopt rules prescribing the procedure for agencies to collect and submit those samples.

The Council Substitute provides that the court is required to include in the judgment of conviction an order stating that blood specimens or other approved biological specimens are required to be drawn by the appropriate agency in a manner consistent with the section.

This Council Substitute amends s. 943.325(10)(e), F.S., providing that a state or local law enforcement or correctional agency may use reasonable force when necessary to require a person to submit to the withdrawal of blood specimens or the collection of other approved biological specimens pursuant to the provisions of this section, and any withdrawal or collection shall be performed in a reasonable manner. CS/HB 1425 provides an exemption from civil or criminal liability for persons who collect or assist in the collection of approved specimens other than blood who use an approved kit and collect the sample in a manner approved by FDLE.

Section 7:

This section amends s. 760.40, F.S., to conform to changes made to Chapter 943 regarding DNA.

Additional Court Cost Clearing Trust Fund and Transfer of the Criminal Justice Program from the Department of Community Affairs to FDLE

Section 8:

Amends s. 938.01, F.S., to provide that court cost collections under this section (Additional Court Cost Clearing Trust Fund), will go entirely to FDLE rather than be divided between the Department of Community Affairs and FDLE. References to disbursements to the DCA are deleted.

Section 9:

Amends s. 943.325, F.S., to provide that FDLE is authorized to disburse from the FDLE Operating Trust Fund those appropriated sums necessary and required by the state to match, implement, administer, evaluate, and qualify for federal funds.

Section 10:

Amends s. 943.325, F.S., to provide for the transfer of the Criminal Justice Program from the Department of Community Affairs to FDLE by a type 2 transfer pursuant to s. 20.06(2), F.S.

Section 11:

Authorizes the FDLE to adopt rules to administer the Criminal Justice Program.

D. SECTION-BY-SECTION ANALYSIS:

See Effects of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The following information has been provided by the Florida Department of Law Enforcement:

- (1) The provisions of the bill related to collection of DNA samples have a minimal fiscal impact that can be assumed within existing resources.
- (2) The Seal and Expunge provisions of the bill have no fiscal impact.
- (3) The provisions related to the transfer of Department of Community Affairs functions to the Department of Law Enforcement have no direct fiscal impact.
- (4) The department will administer provisions related to the expanded role of the Violent Crime Council within current resources, but that state funds are necessary to provide matching funds for drug control and money laundering investigations. The amount of state funds necessary is not specified.

The House version of the FY 2001-02 General Appropriations Act contains \$2,000,000 in recurring General Revenue to provide matching funds for drug control and money laundering investigations.

The FY 2000-01 General Appropriations Act and implementing bill contains the transfer of the Department of Community Affairs functions to the Department of Law Enforcement. The transfer is continued in the House versions of the FY 2001-02 General Appropriations Act and implementing bill.

There is no information on file from the Department of Corrections relating to any fiscal impact that the requirement for additional DNA samples might have on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Additional funds will be available that local governments may access to assist in major drug and money laundering investigations.

2. Expenditures:

Local governments that apply for and receive matching funds would be required to spend these funds for the purpose specified in the application and as directed by the council.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

A provision in Section 1 of the Council Substitute earmarks funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account for unspecified uses if funds are not otherwise available from other Legislative appropriations.

CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

E. APPLICABILITY OF THE MANDATES PROVISION:

The Council Substitute does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

F. REDUCTION OF REVENUE RAISING AUTHORITY:

The Council Substitute does not reduce the authority the counties or municipalities have to raise revenues in the aggregate.

G. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The Council Substitute does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Council Substitute provides for the Department of Law Enforcement to adopt rules to administer the provisions contained in this bill.

C. OTHER COMMENTS:

The expansion of the Violent Crime Council' s role to include drug control efforts was a major recommendation of the Governor's February Statewide Drug Summit.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On 4-3-01, the Committee on Crime Prevention, Corrections and Safety adopted three amendments which are traveling with the bill.

Amendment One: Creates s. 943.0582, F.S., providing that FDLE may expunge any nonjudicial arrest record of a minor who successfully completes a prearrest or postarrest diversion program as provided in s. 985.3065, F.S. The amendment provides that the term "expunction" has the same meaning and effect as set forth in s. 943.0585, F.S., a person may deny or fail to acknowledge the arrest or charge, except that the expunged records are available to criminal justice agencies for purposes of: determining eligibility for prearrest, postarrest or Teen court diversion programs; as part of a criminal investigation; or when the person applies for employment with a criminal justice agency. The amendment provides that records eligible for expunction pursuant to the section and maintained by criminal justice agencies in the arresting county are sealed as set forth in s. 943.059, F.S. This amendment provides requirements for the expunction of records and provides for the retroactive expunction of records of minors who have successfully completed diversion programs on or after July 1, 2001.

Amendment Two: Provides for *postarrest* diversion programs, in addition to prearrest diversion programs, may be established by a law enforcement agency or school district in cooperation with the state attorney. This amendment provides for a ninety day suspension of a child's driver license as a result of a postarrest diversion program. The amendment provides that the prearrest or postarrest

diversion program may, upon agreement of the agencies establishing the program, provide for the expunction of the arrest record of a minor who successfully completes such a program.

Amendment Three: This amendment deletes Sections 8, 9, 10, and 11 from the bill. Those provisions applied to the Additional Court Cost Clearing Trust Fund and the transfer of certain functions from the Department of Community Affairs to the Department of Law Enforcement.

On April 11, 2001, the Criminal Justice Appropriations Committee adopted four amendments that are traveling with the bill as follows:

Amendment One: This amendment is a technical correction to the title.

Amendment Two: This amendment removes language from the bill that provides that funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation account within the department's Operating Trust Fund shall be earmarked for use (unspecified) if funds are not available from other appropriations.

Amendment Three: This amendment provides clarification and further direction to the department regarding factors to consider when determining the actual cost of providing criminal history information.

Amendment Four: This amendment contains a number of provisions related to intercepting police radio communications. Specific provisions include the following: (1) It would be unlawful for a person to intercept a police radio communication for the purpose of facilitating the commission of a crime or to avoid detection of criminal activity; (2) It would be unlawful to divulge such information for the purpose of helping a suspect avoid detection of criminal activity; (3) A violation would be presumed if the individual possessed or used a police scanner or similar device during the time the crime was committed; and (4) Enhanced penalties would apply for persons who violate these provisions.

On April 17, 2001, the Council for Healthy Communities considered the bill and it was reported favorably as a Council Substitute.

VI. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY (HCC):

Prepared by:

Lynn Dodson

Staff Director:

David De La Paz

AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:

James P. DeBeaugrine

Staff Director:

James P. DeBeaugrine

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AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

Lynn Dodson

Mary Pat Moore