



1                                   A bill to be entitled  
2           An act relating to juvenile justice; creating s.  
3           985.702, F.S.; providing definitions; providing for  
4           the imposition of criminal penalties against specified  
5           employees who inflict cruel or inhuman treatment upon  
6           juvenile offenders; providing enhanced penalties for  
7           such treatment that results in great bodily harm,  
8           permanent disability, or permanent disfigurement to a  
9           juvenile offender; specifying that such conduct  
10          constitutes sufficient cause for an employee's  
11          dismissal from employment; prohibiting such employee  
12          from future employment with the juvenile justice  
13          system; providing incident reporting requirements;  
14          prohibiting an employee who witnesses such an incident  
15          from knowingly or willfully failing to report;  
16          prohibiting false reporting, preventing another from  
17          reporting, or coercing another to alter testimony or  
18          reports; providing penalties; amending s. 985.701,  
19          F.S.; defining the term "juvenile offender" for  
20          purposes of prohibiting sexual misconduct with  
21          juvenile offenders; repealing s. 945.75, F.S.;  
22          deleting a requirement that the Department of  
23          Corrections and counties develop programs under which  
24          a judge may order juveniles who have committed  
25          delinquent acts to tour correctional facilities;  
26          repealing s. 985.105, F.S., relating to the creation,  
27          duties, and qualifications of the youth custody  
28          officer position within the Department of Juvenile



29 Justice; amending s. 121.0515, F.S.; conforming  
 30 provisions to changes made by the act; providing an  
 31 effective date.

32  
 33 Be It Enacted by the Legislature of the State of Florida:

34  
 35 Section 1. Section 985.702, Florida Statutes, is created to  
 36 read:

37 985.702 Malicious infliction of cruel or inhuman treatment  
 38 prohibited; reporting required; penalties.-

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

40 (a) "Employee" means a paid staff member, volunteer, or  
 41 intern who works in a department program or a program operated  
 42 by a provider under a contract with the department.

43 (b) "Juvenile offender" means any person of any age who is  
 44 detained, or committed to the custody of, the department.

45 (c) "Neglect of a juvenile offender" means:

46 1. An employee's failure or omission to provide a juvenile  
 47 offender with the proper level of care, supervision, and  
 48 services necessary to maintain the juvenile offender's physical  
 49 and mental health, including, but not limited to, adequate food,  
 50 nutrition, clothing, shelter, supervision, medicine, and medical  
 51 services; or

52 2. An employee's failure to make a reasonable effort to  
 53 protect a juvenile offender from abuse, neglect, or exploitation  
 54 by another person.

55 (2) (a) Any employee who, with malicious intent, inflicts  
 56 cruel or inhuman treatment by neglect or otherwise, without



57 causing great bodily harm, permanent disability, or permanent  
58 disfigurement to a juvenile offender, commits a misdemeanor of  
59 the first degree, punishable as provided in s. 775.082 or s.  
60 775.083.

61 (b) Any employee who, with malicious intent, inflicts  
62 cruel or inhuman treatment by neglect or otherwise, and in so  
63 doing causes great bodily harm, permanent disability, or  
64 permanent disfigurement to a juvenile offender, commits a felony  
65 of the second degree, punishable as provided in s. 775.082,  
66 s.775.083, or s. 775.084.

67 (c) Notwithstanding prosecution, any violation of  
68 paragraph (a) or paragraph (b), as determined by the Public  
69 Employees Relations Commission, constitutes sufficient cause  
70 under s. 110.227 for dismissal from employment with the  
71 department, and such person may not again be employed in any  
72 capacity in connection with the juvenile justice system.

73 (3) An employee who witnesses the infliction of cruel or  
74 inhuman treatment committed against a juvenile offender shall  
75 immediately report the incident to the department's incident  
76 hotline and prepare, date, and sign an independent report that  
77 specifically describes the nature of the incident, the location  
78 and time of the incident, and the persons involved. The employee  
79 shall deliver the report to the employee's supervisor or program  
80 director, who must provide copies to the department's inspector  
81 general and the circuit juvenile justice manager. The inspector  
82 general shall immediately conduct an appropriate administrative  
83 investigation, and, if there is probable cause to believe that a  
84 violation of subsection (2) has occurred, the inspector general



85 shall notify the state attorney in the circuit in which the  
 86 incident occurred.

87 (4) (a) Any person who is required to prepare a report  
 88 under this section who knowingly or willfully fails to do so, or  
 89 who knowingly or willfully prevents another person from doing  
 90 so, commits a misdemeanor of the first degree, punishable as  
 91 provided in s. 775.082 or s. 775.083.

92 (b) Any person who knowingly or willfully submits  
 93 inaccurate, incomplete, or untruthful information with respect  
 94 to a report required under this section commits a misdemeanor of  
 95 the first degree, punishable as provided in s. 775.082 or s.  
 96 775.083.

97 (c) Any person who knowingly or willfully coerces or  
 98 threatens any other person with the intent to alter testimony or  
 99 a written report regarding an incident of the infliction of  
 100 cruel or inhuman treatment commits a felony of the third degree,  
 101 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

102 Section 2. Paragraph (a) of subsection (1) of section  
 103 985.701, Florida Statutes, is amended to read:

104 985.701 Sexual misconduct prohibited; reporting required;  
 105 penalties.—

106 (1) (a) 1. As used in this subsection, the term:

107 a. "Sexual misconduct" means fondling the genital area,  
 108 groin, inner thighs, buttocks, or breasts of a person; the oral,  
 109 anal, or vaginal penetration by or union with the sexual organ  
 110 of another; or the anal or vaginal penetration of another by any  
 111 other object. The term does not include an act done for a bona  
 112 fide medical purpose or an internal search conducted in the



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113 lawful performance of duty by an employee of the department or  
114 an employee of a provider under contract with the department.

115 b. "Employee" includes paid staff members, volunteers, and  
116 interns who work in a department program or a program operated  
117 by a provider under a contract.

118 c. "Juvenile offender" means a person of any age who is  
119 detained or supervised by, or committed to the custody of, the  
120 department.

121 2. An employee who engages in sexual misconduct with a  
122 juvenile offender detained or supervised by, or committed to the  
123 custody of, the department commits a felony of the second  
124 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
125 775.084. An employee may be found guilty of violating this  
126 subsection without having committed the crime of sexual battery.

127 3. The consent of the juvenile offender to any act of  
128 sexual misconduct is not a defense to prosecution under this  
129 subsection.

130 4. This subsection does not apply to an employee of the  
131 department, or an employee of a provider under contract with the  
132 department, who:

133 a. Is legally married to a juvenile offender who is  
134 detained or supervised by, or committed to the custody of, the  
135 department.

136 b. Has no reason to believe that the person with whom the  
137 employee engaged in sexual misconduct is a juvenile offender  
138 detained or supervised by, or committed to the custody of, the  
139 department.

140 Section 3. Section 945.75, Florida Statutes, is repealed.



141 Section 4. Section 985.105, Florida Statutes, is repealed.

142 Section 5. Paragraphs (h) through (k) of subsection (3) of  
143 section 121.0515, Florida Statutes, are redesignated as  
144 paragraphs (g) through (j) of that subsection, respectively, and  
145 paragraphs (e) through (i) of subsection (2), present paragraphs  
146 (g) and (k) of subsection (3), paragraph (b) of subsection (5),  
147 paragraph (d) of subsection (8), and paragraph (c) of subsection  
148 (10) of that section are amended to read:

149 121.0515 Special Risk Class.—

150 (2) MEMBERSHIP.—

151 ~~(e) Effective July 1, 2001, "special risk member" includes~~  
152 ~~any member who is employed as a youth custody officer by the~~  
153 ~~Department of Juvenile Justice and meets the special criteria~~  
154 ~~set forth in paragraph (3) (g).~~

155 (e)~~(f)~~ Effective October 1, 2005, through June 30, 2008,  
156 the member must be employed by a law enforcement agency or  
157 medical examiner's office in a forensic discipline and meet the  
158 special criteria set forth in paragraph (3) (g) ~~(3) (h)~~.

159 (f)~~(g)~~ Effective July 1, 2008, the member must be employed  
160 by the Department of Law Enforcement in the crime laboratory or  
161 by the Division of State Fire Marshal in the forensic laboratory  
162 and meet the special criteria set forth in paragraph (3) (h)  
163 ~~(3) (i)~~.

164 (g)~~(h)~~ Effective July 1, 2008, the member must be employed  
165 by a local government law enforcement agency or medical  
166 examiner's office and meet the special criteria set forth in  
167 paragraph (3) (i) ~~(3) (j)~~.

168 (h)~~(i)~~ Effective August 1, 2008, "special risk member"



169 includes any member who meets the special criteria for continued  
170 membership set forth in paragraph (3) (j) ~~(3) (k)~~.

171 (3) CRITERIA.—A member, to be designated as a special risk  
172 member, must meet the following criteria:

173 ~~(g) Effective July 1, 2001, the member must be employed as~~  
174 ~~a youth custody officer and be certified, or required to be~~  
175 ~~certified, in compliance with s. 943.1395. In addition, the~~  
176 ~~member's primary duties and responsibilities must be the~~  
177 ~~supervised custody, surveillance, control, investigation,~~  
178 ~~apprehension, arrest, and counseling of assigned juveniles~~  
179 ~~within the community;~~

180 (j) (k) The member must have already qualified for and be  
181 actively participating in special risk membership under  
182 paragraph (a), paragraph (b), or paragraph (c), must have  
183 suffered a qualifying injury as defined in this paragraph, must  
184 not be receiving disability retirement benefits as provided in  
185 s. 121.091(4), and must satisfy the requirements of this  
186 paragraph.

187 1. The ability to qualify for the class of membership  
188 defined in paragraph (2) (h) ~~(2) (i)~~ occurs when two licensed  
189 medical physicians, one of whom is a primary treating physician  
190 of the member, certify the existence of the physical injury and  
191 medical condition that constitute a qualifying injury as defined  
192 in this paragraph and that the member has reached maximum  
193 medical improvement after August 1, 2008. The certifications  
194 from the licensed medical physicians must include, at a minimum,  
195 that the injury to the special risk member has resulted in a  
196 physical loss, or loss of use, of at least two of the following:



197 left arm, right arm, left leg, or right leg; and:

198 a. That this physical loss or loss of use is total and  
199 permanent, except in the event that the loss of use is due to a  
200 physical injury to the member's brain, in which event the loss  
201 of use is permanent with at least 75 percent loss of motor  
202 function with respect to each arm or leg affected.

203 b. That this physical loss or loss of use renders the  
204 member physically unable to perform the essential job functions  
205 of his or her special risk position.

206 c. That, notwithstanding this physical loss or loss of  
207 use, the individual is able to perform the essential job  
208 functions required by the member's new position, as provided in  
209 subparagraph 3.

210 d. That use of artificial limbs is either not possible or  
211 does not alter the member's ability to perform the essential job  
212 functions of the member's position.

213 e. That the physical loss or loss of use is a direct  
214 result of a physical injury and not a result of any mental,  
215 psychological, or emotional injury.

216 2. For the purposes of this paragraph, "qualifying injury"  
217 means an injury sustained in the line of duty, as certified by  
218 the member's employing agency, by a special risk member that  
219 does not result in total and permanent disability as defined in  
220 s. 121.091(4)(b). An injury is a qualifying injury if the injury  
221 is a physical injury to the member's physical body resulting in  
222 a physical loss, or loss of use, of at least two of the  
223 following: left arm, right arm, left leg, or right leg.  
224 Notwithstanding any other provision of this section, an injury



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225 that would otherwise qualify as a qualifying injury is not  
226 considered a qualifying injury if and when the member ceases  
227 employment with the employer for whom he or she was providing  
228 special risk services on the date the injury occurred.

229 3. The new position, as described in sub-subparagraph  
230 1.c., that is required for qualification as a special risk  
231 member under this paragraph is not required to be a position  
232 with essential job functions that entitle an individual to  
233 special risk membership. Whether a new position as described in  
234 sub-subparagraph 1.c. exists and is available to the special  
235 risk member is a decision to be made solely by the employer in  
236 accordance with its hiring practices and applicable law.

237 4. This paragraph does not grant or create additional  
238 rights for any individual to continued employment or to be hired  
239 or rehired by his or her employer that are not already provided  
240 within the Florida Statutes, the State Constitution, the  
241 Americans with Disabilities Act, if applicable, or any other  
242 applicable state or federal law.

243 (5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

244 (b) Any member who is a special risk member on July 1,  
245 2008, and who became eligible to participate under paragraph  
246 (3) (g) ~~(3) (h)~~ but fails to meet the criteria for Special Risk  
247 Class membership established by paragraph (3) (h) ~~(3) (i)~~ or  
248 paragraph (3) (i) ~~(3) (j)~~ shall have his or her special risk  
249 designation removed and thereafter shall be a Regular Class  
250 member and earn only Regular Class membership credit. The  
251 department may review the special risk designation of members to  
252 determine whether or not those members continue to meet the



253 criteria for Special Risk Class membership.

254 (8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

255 (d) Notwithstanding any other provision of this  
256 subsection, this subsection does not apply to any special risk  
257 member who qualifies for continued membership pursuant to  
258 paragraph (3) (j) ~~(3) (k)~~.

259 (10) CREDIT FOR UPGRADED SERVICE.—

260 (c) Any member of the Special Risk Class who has earned  
261 creditable service through June 30, 2008, in another membership  
262 class of the Florida Retirement System in a position with the  
263 Department of Law Enforcement or the Division of State Fire  
264 Marshal and became covered by the Special Risk Class as  
265 described in paragraph (3) (h) ~~(3) (i)~~, or with a local government  
266 law enforcement agency or medical examiner's office and became  
267 covered by the Special Risk Class as described in paragraph  
268 (3) (i) ~~(3) (j)~~, which service is within the purview of the  
269 Special Risk Class, and is employed in such position on or after  
270 July 1, 2008, may purchase additional retirement credit to  
271 upgrade such service to Special Risk Class service, to the  
272 extent of the percentages of the member's average final  
273 compensation provided in s. 121.091(1)(a)2. The cost for such  
274 credit must be an amount representing the actuarial accrued  
275 liability for the difference in accrual value during the  
276 affected period of service. The cost shall be calculated using  
277 the discount rate and other relevant actuarial assumptions that  
278 were used to value the Florida Retirement System Pension Plan  
279 liabilities in the most recent actuarial valuation. The division  
280 shall ensure that the transfer sum is prepared using a formula



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281 and methodology certified by an enrolled actuary. The cost must  
282 be paid immediately upon notification by the division. The local  
283 government employer may purchase the upgraded service credit on  
284 behalf of the member if the member has been employed by that  
285 employer for at least 3 years.

286 Section 6. This act shall take effect upon becoming a law.