CORRECTIONS

SB 1596 — Frivolous Actions/Filed by Prisoner

by Senators Smith, Lynn, Haridopolos, Pruitt, and Aronberg

This bill amends s. 944.279, F.S., which subjects an inmate to Department of Corrections' disciplinary proceedings if a court finds that the inmate filed an action or appeal in bad faith or knowingly presented false information or evidence to the court. The bill removes an exception that prevents application of the sanction to a collateral criminal proceeding filed by an inmate.

If approved by the Governor, these provisions take effect October 1, 2004.
Vote: Senate 37-0; House 110-5

SB 1684 — DOC Employees/Additional Employment

by Senators Cowin, Lynn, Lawson, and Campbell

This bill amends s. 944.38, F.S., to provide that an officer or employee of the Department of Corrections can take additional employment or engage in any pursuit that does not interfere with discharge of his or her duties. The bill also allows a department officer or employee to work for a department contractor as long as he or she is not involved in procurement or evaluation for the contract.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

CS/CS/SB 2336 — Probation and Community Control

by Judiciary Committee and Criminal Justice Committee

The bill reorganizes ch. 948, F.S., which relates to probation and community control, by subject area. The bill includes no substantive changes.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 38-0; House 109-0

CRIMINAL PROCEDURE

CS/SB 118 — Officer Cheryl Seiden Act

by Governmental Oversight and Productivity Committee and Senators Fasano, Lynn, Argenziano, Margolis, and Wilson

This bill (Chapter 2004-14, L.O.F.) prohibits the court's acceptance of a plea agreement that prohibits a law enforcement officer from appearing or speaking at a parole hearing or clemency hearing. The bill also provides that when the crime victim is a law enforcement officer, a plea agreement may not prohibit the officer or their representative from appearing or providing a statement at the sentencing hearing, and adopts the definition of "law enforcement officer" as set forth in s. 943.10, F.S. The bill also clarifies that nothing in the amended section (s. 921.143, F.S.), may be construed to impair a victim's statutory rights as set forth in ch. 960, F.S., or constitutional rights as stated in s. 16(b), Art. I, State Constitution.

These provisions were approved by the Governor and take effect July 1, 2004.
Vote: Senate 38-0; House 114-0

CS/SB 222 — Service of Process

by Criminal Justice Committee and Senator Crist

The bill amends s. 48.031, F.S., to allow witness subpoenas to be served by any form of United States mail in misdemeanor, second or third degree felony, and criminal traffic cases. The witness cannot be held in contempt of court for failure to appear if certified mail is not used. The bill permits posting of a criminal witness subpoena after three unsuccessful attempts to serve the subpoena at the witness' residence on different dates and times of day. Also, service may be made on the person in charge of a private mailbox service if the person to be served maintains a private mailbox at that location and does not have another address.

The bill amends s. 48.081, F.S., relating to service on corporations. If service cannot be made on a corporation's registered agent because of a failure to comply with s. 48.091, F.S., service may be made on any employee of the corporation at its principal place of business or upon any employee of the registered agent. The section also allows service in accordance with s. 48.031, F.S., if the address for a corporation's registered agent, officer, director, or place of business is a residence or a private mailbox.

The bill broadens the language of s. 48.21, F.S., to refer to "the person who effects service of process" rather than only "officers to whom process is directed." It also revises the section to require notation of the date of receipt and service and to refer to "service" rather than "execution" of process. The bill also deletes s. 48.29(6)(a), F.S., to eliminate the requirement for certified process servers to annotate certain other information on the face of the original and any served copies of the process.

The bill amends s. 83.13, F.S., to make the party who had a distress writ issued in a non-residential tenancy case responsible for delivering the writ to the appropriate county sheriff if the property has been removed from the county where the writ was issued.

The bill creates a new subsection of s. 624.307, F.S., authorizing the Chief Financial Officer to use registered mail, certified mail, or any other verifiable means to forward legal process that is received for a regulated person who is required to appoint the CFO as attorney to receive legal process.

The bill amends s. 832.07, F.S., concerning prima facie evidence of intent to pass a worthless check, to allow the recipient of a worthless check to send notice to the maker by first-class mail, evidenced by an affidavit of service. The bill also requires the maker of a worthless check to make the check good within 15 days after written notice is sent to the address printed on the check or given at the time of issuance.

The bill amends s. 409.257, F.S., to allow the Department of Revenue to issue witness subpoenas by regular United States mail in child support enforcement cases.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 37-1; House 118-0

CRIMINAL OFFENSES AND PENALTIES

HB 295 — Fleeing Law Enforcement Officer

by Rep. Patterson and others (SB 1322 by Senator Lynn)

The bill amends s. 316.1935(1), F.S., to provide that it is a third degree felony for the operator of a vehicle, having knowledge that he or she has been ordered to stop such vehicle by a duly authorized law enforcement officer, willfully to refuse or fail to stop, or having stopped in compliance with such order, willfully to flee in an attempt to elude the officer.

The bill also amends s. 316.1935(3), F.S., to create paragraph (3)(b), which provides that a person commits a first degree felony if he or she willfully flees or attempts to elude a law enforcement officer in an authorized law enforcement patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle, with siren and lights activated, and during the course of the fleeing or attempted eluding, drives at high speed, or in any manner which demonstrates a wanton disregard for the safety of persons or property, and causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle. The court shall sentence the person convicted of this offense to a mandatory minimum sentence of 3 years

imprisonment. The punishment provided shall not prevent a court from imposing a greater sentence of incarceration as authorized by law.

The bill also amends s. 316.1935(4), F.S., to create paragraph (4)(b), which provides that a person commits aggravated fleeing or eluding with serious bodily injury or death, a first degree felony, if he or she, in the course of unlawfully leaving or attempting to leave the scene of a crash (in violation of s. 316.027, F.S., or s. 316.0611, F.S.), having knowledge of an order to stop by a duly authorized law enforcement officer, willfully refuses or fails to stop in compliance with such an order, or having stopped in compliance with such order, willfully flees in an attempt to elude such officer and, as a result of such fleeing or eluding, causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle. The felony of aggravated fleeing or eluding and the felony of aggravated fleeing or eluding with serious bodily injury or death constitute separate offenses for which a person may be charged, in addition to the offenses under ss. 316.027 and 316.061, relating to unlawfully leaving the scene of a crash, which the person had been in the course of committing or attempting to commit when the order to stop was given.

The court shall sentence the person convicted of aggravated fleeing or eluding with serious bodily injury or death to a mandatory minimum sentence of 3 years imprisonment and revoke the person's driver's license for a period not less than 1 year nor exceeding 5 years. The punishment provided shall not prevent a court from imposing a greater sentence of incarceration as authorized by law. No court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of s. 316.1935, F.S., and a person convicted and sentenced to a minimum mandatory term of incarceration under s. 316.1935(3)(b) or s. 316.1935(4)(b), F.S., is not eligible for statutory gain-time under s. 944.275, F.S., or any form of discretionary early release, other than pardon or executive clemency or conditional medical release under s. 947.149, F.S., prior to serving the mandatory minimum sentence.

Any motor vehicle involved in a violation of s. 316.1935, F.S., is deemed to be contraband, which may be seized by a law enforcement agency and is subject to forfeiture pursuant to ss. 932.701-932.704, F.S., the Florida Contraband Forfeiture Act.

The bill also amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank the third-degree felony offense in s. 316.1935(1), F.S., in Level 1 of the chart, rank the first-degree felony offense in s. 316.1935(3)(b), F.S., in Level 7 of the chart, rank the first-degree felony offense in s. 316.1935(4)(b), F.S., in Level 8 of the chart, and make technical or conforming changes to the chart consistent with the amendments to s. 316.1935, F.S.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 35-4; House 110-1

HB 599 — Stolen Property

by Rep. Culp and others (CS/CS/SB 1380 by Judiciary Committee; Criminal Justice Committee; and Senators Argenziano, Crist, and Lynn)

The bill amends s. 812.022, F.S., to provide that proof that a dealer who regularly deals in used property possesses stolen property upon which a name and phone number of a person other than the offeror of the property are conspicuously displayed gives rise to an inference that the dealer possessing the property knew or should have known that the property was stolen. If the name and phone number are for a business that rents property, the dealer avoids the inference by contacting the business, prior to accepting the property, to verify that the property was not stolen from the business. If the name and phone number are not for a business that rents property, the dealer avoids the inference by contacting the local law enforcement agency in the jurisdiction where the dealer is located, prior to accepting the property, to verify that the property has not been reported stolen. An accurate written record, which contains specified information, is sufficient evidence to avoid the inference.

The bill provides that the inference created by the bill does not apply to:

- Persons, entities, or transactions exempt from s. 538.57, F.S. (nonprofits, certain transactions involving secondhand goods, and specified persons, entities, and transactions);

- Printed or recorded materials, computer software, videos, video games, or used sports equipment that does not contain a serial number; or

- A dealer that implements, in a continuous and consistent manner, a program for identification and return of stolen property that meet several specified criteria.

The bill also amends s. 921.0022, F.S., the offense ranking chart of the Criminal Punishment Code, to raise from Level 6 to Level 7 the offense of cargo theft where the property stolen is valued at less than $50,000, and to raise from Level 7 to Level 8 the offense of cargo theft where the property stolen is valued at $50,000 or more.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 39-0; House 115-0

CS/SB 678 — Assault/Battery on Sports Official

by Criminal Justice Committee and Senators Smith, Lynn, and Dawson

The bill amends s. 784.081, F.S., to provide for the reclassification of the felony or misdemeanor degree, as applicable, of assault, aggravated assault, battery, or aggravated battery when any of

those offenses are committed upon a sports official when he or she is actively participating as a sports official in an athletic contest or immediately following such athletic contest.

The bill defines the term "sports official" as "any person who serves as a referee, an umpire, or a linesman, and any person who serves in a similar capacity as a sports official who may be known by another title, which sports official is duly registered by or is a member of a local, state, regional, or national organization that is engaged in part in providing education and training to sports officials."

If approved by the Governor, these provisions take effect October 1, 2004.
Vote: Senate 38-1; House 113-0

HB 869 — Adjudication of Guilt

by Rep. Gelber and others (CS/SB 2552 by Criminal Justice Committee and Senator Villalobos)

The bill creates s. 775.08435, F.S., which prohibits a court from withholding adjudication of guilt for a capital felony, life felony, and first degree felony.

A court also may not withhold adjudication of guilt for a second degree felony if the defendant has a prior withhold of adjudication for a felony not arising from the same transaction as the current felony. If there is no such prior felony, the court can only withhold adjudication if it makes a written finding that a withhold of adjudication is reasonably justified based on statutorily-specified factors for mitigating a Criminal Punishment Code sentence or the state attorney requests in writing that adjudication be withheld.

A court also may not withhold adjudication of guilt for a third degree felony if the defendant has a prior withhold of adjudication for a felony not arising from the same transaction as the current felony, unless the state attorney requests in writing a withhold of adjudication or the court makes a written finding that a withhold of adjudication is reasonably justified based on statutorily-specified mitigating factors. However, there cannot be a withhold of adjudication of guilt for a third degree felony if the defendant has two or more prior withholds of adjudication for a felony not arising from the same transaction as the current felony.

The bill amends s. 924.07, F.S., to provide that the state may appeal from an order withholding adjudication of guilt in violation of the new statute.

The bill repeals Florida Rule of Criminal Procedure 3.670 to the extent that it is inconsistent with the provisions of the bill.

If approved by the Governor, these provisions take effect July 1, 2004, except as otherwise provided.
Vote: Senate 39-0; House 108-0

HB 1313 — Illegal Use of Nets

by Rep. Gardiner and others (CS/SB 2334 by Criminal Justice Committee and Senators Haridopolos and Pruitt)

This bill revises the criminal penalty and civil penalties applicable to a flagrant violation of the marine net fishing limitations contained in s. 16, Art. X, State Constitution, and the statutes or rules implementing that provision. The criminal penalty is a third degree felony. The civil penalties are as follows: for a first flagrant violation, a $5,000 fine and a 12-month suspension of license privileges; for a second or subsequent flagrant violation, a $5,000 fine, lifetime suspension of license privileges, and forfeiture of all gear used in the violation.

A "flagrant violation" is defined as the illegal possession or use of a monofilament net or a net with a mesh area larger than 2000 square feet.

The bill also provides for application of current civil penalties to violations of statutes implementing s. 16(b), Art. X, State Constitution.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 29-9; House 114-0

CS/CS/SB 1376 — Habitual Misdemeanor Offenders

by Appropriations Committee; Criminal Justice Committee; and Senators Haridopolos, Pruitt, and Lynn

The bill creates s. 775.0837, F.S., which creates a new category of habitual offender called the "habitual misdemeanor offender," which the bill defines as a defendant who is before the court for sentencing for a specified misdemeanor and who has previously been convicted, as an adult, of four or more specified misdemeanor offenses, which, in relation to each other and the misdemeanor before the court for sentencing, must be separate offenses that are not part of the same criminal transaction or episode, and which must have been committed within 1 year of the date the misdemeanor before the court for sentencing was committed.

The bill limits the specified misdemeanor offenses to misdemeanor violations under the following statutory chapters: ch. 741, F.S. (domestic violence); ch. 784, F.S. (assault and battery); ch. 790, F.S. (weapons and firearms); ch. 796, F.S. (prostitution); ch. 800, F.S. (lewdness and indecent exposure); ch. 806, F.S. (arson and criminal mischief); ch. 810, F.S. (burglary and trespass); ch. 812, F.S. (theft and robbery); ch. 817, F.S. (fraudulent practices); ch. 831, F.S. (forgery and counterfeiting); ch. 832, F.S. (violations involving checks); ch. 843, F.S. (obstructing justice); ch. 856, F.S. (drunkenness, loitering and prowling); ch. 893, F.S. (drug abuse); or ch. 901, F.S. (arrests).

The bill provides that, if the court finds that a defendant before the court for sentencing for a misdemeanor is a habitual misdemeanor offender, the court shall, unless the court makes a finding that an alternative disposition is in the best interests of the community and defendant, sentence the defendant as a habitual misdemeanor offender to one of following three sentences:

- Imprisonment of not less than 6 months, but not to exceed 1 year;

- Commitment to a residential treatment program for not less than 6 months, but not to exceed 364 days, provided that the treatment program is operated by the county or a private vendor with which the county has contracted to operate such program, or by a private vendor under contract with the state or licensed by the state to operate such program, and provided that any referral to a residential treatment facility is in accordance with the assessment criteria for residential treatment established by the Department of Children and Family Services, and that residential treatment beds are available or other community-based treatment programs or a combination of residential and community-based programs; or

- Detention for not less than 6 months, but not to exceed 364 days, to a designated residence, if the detention is supervised or monitored by the county or by a private vendor with which the county has contracted to supervise or monitor the detention.

The bill further provides that the court may not sentence a defendant as a habitual misdemeanor offender if the misdemeanor offense before the court for sentencing has been reclassified as a felony as a result of any prior qualifying misdemeanor.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 74-37

SB 1768 — Possession/Firearms/Felon/Delinquent

by Senator Smith

The bill defines ammunition and includes possession of it by a convicted felon, violent career criminal, or juvenile delinquent as a second degree felony crime in s. 790.23, F.S. Possession of a firearm, or electric weapon or device, or carrying a concealed weapon including a tear gas gun or chemical weapon is currently prohibited in s. 790.23, F.S., and constitutes a second degree felony, Level 5 in the Criminal Punishment Code Offense Ranking Chart.

If approved by the Governor, these provisions take effect October 1, 2004.
Vote: Senate 39-0; House 114-0

HB 1807 — Burglary

by Public Safety and Crime Prevention Committee and others (CS/SB 2856 by Criminal Justice Committee and Senators Smith and Lynn)

The bill is intended to provide further clarification of provisions in s. 810.015, F.S., which indicate the Florida Supreme Court's holding in *Delgado v. State*, 776 So. 2d 233 (Fla. 2000), is contrary to legislative intent and that the Legislature intends that *Delgado* be nullified. In *Delgado*, the Court held that evidence of a crime committed inside a dwelling, structure, or conveyance of another cannot, in and of itself, establish the crime of burglary. A person who is invited to enter a dwelling, structure, or conveyance only commits burglary by remaining in with the intent to commit an offense therein, if he or she remains on the property surreptitiously.

The *Delgado* holding is a substantial departure from prior cases of the Court in which it had held that when a defendant was invited to enter the property, a burglary is committed when the defendant remains on the property after his or her license to remain on the property has been revoked (i.e. the occupant withdrew consent for the defendant to stay on the property), and the defendant remained on the property, despite the revocation, with the intent to commit an offense therein. Withdrawal of consent is implicit when a crime is committed on the property and can be proven by circumstantial evidence.

In response to the *Delgado* decision, the Legislature created s. 810.015, F.S., which indicates that the Legislature's intent regarding burglary accords with the pre-*Delgado* cases. ch. 2001-58, L.O.F. In creating this section, the Legislature specified that the provision indicating its intent to nullify *Delgado* was retroactive to February 1, 2000, a date two days prior to the issuance of *Delgado*. The Florida Supreme Court recently interpreted the choice of this date as indicating when offenses are committed.

The bill amends s. 810.015, F.S., to provide a legislative finding that specified cases of the Florida Supreme Court following that court's decision in *Delgado* were decided contrary to the legislative intent expressed in s. 810.015, F.S., regarding the elements of burglary and so as to give no effect to legislative findings regarding that legislative intent.

The bill also provides a legislative finding that the date of February 1, 2000, does not refer to an arbitrary date relating to the date offenses were committed, but to a date before *Delgado* issued when the Florida Supreme Court construed the elements of burglary consistent with legislative intent in s. 810.015, F.S.

The bill also provides special rules of construction to give effect to legislative findings in s. 810.015, F.S., rather than the interpretation of the elements of burglary in *Delgado* and its progeny. Any provision of s. 810.015, F.S., that is susceptible to differing constructions is to be construed in such manner as to approximate the law relating to burglary as if *Delgado* was never issued.

The bill also provides for retroactive application of s. 810.015, F.S.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 102-2

SB 1828 — Home-Invasion Robbery

by Senators Smith and Lawson

The bill amends s. 812.135, F.S., to create three home-invasion robbery offenses. Under current law, home-invasion robbery is a first degree felony ranked in Level 8. In terms of penalties, the law does not distinguish between the robbery when it is committed while armed and the robbery when it is committed while unarmed. The bill punishes home-invasion robbery while armed more severely than home-invasion robbery while unarmed. If a person, in the course of committing a home-invasion robbery, carries a firearm or other deadly weapon, the person commits a first degree felony punishable by a term of years not to exceed life imprisonment, which is made a Level 10 offense in the offense severity ranking chart of the Criminal Punishment Code. If a person is carrying a weapon, it is a first degree felony, which is made a Level 9 offense. If a person is not carrying a firearm, deadly weapon, or other weapon, it is a first degree felony, which is made a Level 8 offense.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

SB 1962 — Human and Sex Trafficking

by Senators Wasserman Schultz, Smith, Aronberg, and Haridopolos

The bill creates s. 787.05, F.S., which makes it a second degree felony for any person to knowingly obtain the labor or services of a person by causing or threatening to cause bodily injury to that person or another person, restraining or threatening to restrain that person or another person without lawful authority and against her or his will, or withholding that person's governmental records, identifying information, or other personal property.

The bill also creates s. 787.06, F.S., which makes it a second degree felony to knowingly engage in human trafficking with the intent that the trafficked person engage in forced labor or services. The term "human trafficking" is defined as transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport. The term "forced labor or services" is defined as labor or services obtained from a person by using or threatening to use physical force against that person or another person or restraining or confining or threatening to restrain or confine that person or another person without lawful authority and against her or his will.

The bill also creates s. 796.035, F.S., which makes it a first degree felony for any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers

custody or control of the minor, or offers to sell or otherwise transfer custody of the minor, with knowledge that, as a consequence of the sale or transfer, force, fraud, or coercion will be used to cause the minor to engage in prostitution or otherwise participates in the trade of sex trafficking, commits sex trafficking, a first degree felony.

The bill also creates s. 796.045, F.S., which provides that any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a second degree felony, unless the victim is under the age of 14 or the offense results in a death, in which case it is a first degree felony.

The bill also amends s. 895.02, F.S., the definitions section of the Florida RICO statute, to provide that the offenses in ss. 796.035 and 796.045, F.S., are predicate offenses for the purpose of racketeering prosecutions. A defendant can be convicted of a sex trafficking offense in these sections and a RICO offense in which the sex trafficking offense is a predicate offense.

If approved by the Governor, these provisions take effect October 1, 2004.
Vote: Senate 35-0; House 114-0

FIREARMS

HB 155 — Firearm Records

by Rep. Harrington and others (CS/CS/SB 1152 by Judiciary Committee; Criminal Justice Committee; and Senator Peaden)

This bill prohibits any state, regional, or local governmental entity from knowingly and willfully keeping, or causing to be kept, any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of such firearms. Private entities and persons are similarly prohibited.

A violation of the prohibition is a third degree felony which is punishable by up to five years in prison and by up to a $5,000 fine. An exception exists for pawnbrokers and secondhand dealers who violate the specific provisions relating to transfer of records to third party providers for which that act is punishable as a second degree felony. The bill prohibits the use of public funds (except as those funds may be used to provide an indigent person a public defender or a court-appointed counsel pursuant to their constitutional right to counsel) in the defense of any person charged with violating this section, unless the charges are dismissed or the person is found not guilty.

The bill provides that a governmental entity, or their designee, may be fined not more than $5 million, if a list, record, or registry is compiled in violation of the prohibition and a court finds that the information was compiled with the knowledge of the management of the entity. This

appears to be a civil fine to be enforced by the attorney general in a separate civil action. The state attorney is charged with investigating and prosecuting criminal complaints of violations.

The bill provides numerous exemptions to the prohibition against keeping firearm records. The exemptions, some of which are subject to further restrictions, apply to:

- Records of firearms used in a crime or of any person convicted of a crime.
- Records of firearms that have been reported stolen. (However, such records cannot be retained for longer than 10 days after recovery but official documentation recording the theft of a recovered weapon can be maintained for the balance of the year entered plus 2 years.)
- Records that are federally required to be maintained by firearm dealers. (However, these records may not be converted into any form of list, registry, or database.)
- Records related to the criminal history background check provisions of s. 790.065, F.S.
- Firearm records including paper pawn transaction forms and contracts on firearm transactions, required to be kept by secondhand and pawnshops dealers under chs. 538 and 539, F.S. (However, the electronic version of these records can only be kept for 30 days after the purchase of the firearm by the secondhand dealer, or after the expiration of the loan secured by the firearm, respectively.) Additionally, these records cannot be electronically transferred to any public or private entity or copied or otherwise transferred for the purpose of creating a list, registry, or database but they can be electronically transferred to law enforcement as required by the existing provisions in chs. 538 and 539, F.S. Law enforcement has to destroy these records within 60 days after receipt of such records. Additionally, despite the prohibition against transferring such records to any public or private entity, secondhand dealers and pawnbrokers can electronically submit firearm records (limited to the following information: the manufacturer of the firearm, the model, the serial number, and the caliber of the pawned or purchased firearm) to a third party provider provided that provider is exclusively incorporated, owned, and operated in the United States, restricts access to such information to appropriate law enforcement agencies for legitimate law enforcement purposes, and agrees in writing to comply with the requirements of this new law. This third party provider, however, in turn has to destroy these records within 30 days (presumably of the date of receipt; if the pawnbroker or secondhand dealer acts in contravention of these specific provisions, he or she commits a felony of the second degree which is one higher degree felony offense than for other violations under this bill).
- FDLE records pertaining to criminal history record checks conducted through the NCIC of the FBI to the extent required by federal law; and a log of dates of requests for criminal history record checks, unique approval and nonapproval numbers, license identification numbers, and transaction numbers corresponding to such dates.
- Insurer's records against theft or loss of firearms provided such records are not sold, commingled with records relating to other firearms, or transferred to another person or

entity. (However, the insurer must destroy these records within 60 days after the policy expires or the insured notifies the insurer that the insured no longer owns the firearm.)
- Customer lists of firearm dealers. (However, the lists cannot disclose the particular firearms purchased or be sold or commingled with records relating to other firearms, or transferred to another person or entity.)
- Sales receipts kept by sellers of firearms or a person providing credit for the purchase of firearms. (However, the receipts may not be used for the creation of a database for the registration of firearms.)
- Personal records maintained by the owner of firearms.
- Records of a business which stores or acts as a selling agent for the lawful owner of firearms.
- Membership lists of firearm owner organizations.
- Records maintained by an employer of the firearms owned by its officers, employees, or agents if the firearms are used in the course of the employer's business.
- Records maintained pursuant to s. 790.06, F.S., related to the issuance of licenses for concealed weapons or firearms by the Department of Agriculture and Consumer Services. (However, the department may only keep such records on an individual who was a licensee within the prior two years.)
- Records of firearms involved in criminal investigations, criminal prosecutions, criminal appeals, and postconviction motions, as well as certain civil proceedings.
- Paper documents relating to firearms involved in criminal cases, criminal investigations, criminal prosecutions, and certain civil proceedings.
- Non-criminal records relating to the receipt, storage, and return of firearms.

The bill states that any list, record, or registry maintained at the time the act becomes effective must be destroyed within 60 days of the effective date. Further, the provisions of the bill may not be construed to grant any substantive, procedural, privacy right, or civil claim to any defendant, nor can a violation of the bill's provisions be grounds for the suppression of evidence.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 29-9; House 86-32

SB 226 — Law Enforcement Fair Defense Act

by Senators Posey, Fasano, and Cowin

This bill creates the "Law Enforcement Fair Defense Act" by revising s. 111.065, F.S., which governs the provision and payment of a law enforcement officer's legal representation in civil and criminal actions under specified circumstances. Specifically, the bill provides as follows:

- Broadens the definition of officer to include law enforcement officer, corrections officer, and correctional probation officer for purposes of who may qualify for the provision and

payment of legal representation associated with his or her defense in a civil or criminal action.

- Mandates an employing agency to provide and pay for legal representation in criminal actions against an officer if all of the following criteria are met:
    - The officer's action occurred in response to an emergency; upon the need to protect the officer or others from imminent death or bodily harm; or during an officer's fresh pursuit, apprehension, or attempted apprehension of a suspect whom the officer reasonably believes has perpetrated or attempted to perpetrate a forcible felony or escape;
    - The officer's actions arose within the course and scope of his or her duties; and
    - The officer's actions were not acts of omission or commission which constituted a material departure from the employing written policies and procedures, or from generally recognized criminal justice standards if no written policies or procedures exist.

- Provides an alternative process by which an employing agency may reimburse an officer's legal representation when an employing agency does not provide an attorney or the officer does not use the employing agency's attorney, but only if the officer did not plead guilty or nolo contendere or was not found guilty at trial.

- Caps reimbursement for fees and costs under the alternative process at $100,000.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

SB 1620 — Firearms/Sales and Delivery

by Criminal Justice Committee and Senator Lynn

This bill amends the sunset provision on the Firearm Purchase Program from June 1, 2004, to October 1, 2009. The Firearm Purchase Program performs criminal record checks on potential firearm purchasers who are making the purchase from licensed firearm dealers in Florida.

The program will be reviewed during the 2009 Legislative Session. The October 1, 2009, repeal date will provide ample time for FDLE to phase-out the program should the Legislature decide to discontinue the program during that Legislative Session.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 107-0

LAW ENFORCEMENT

SB 1792 — Criminal Justice Standards and Training Commission

by Senator Garcia

The bill amends s. 943.11, F.S., to change the composition of the Criminal Justice Standards and Training Commission. The Attorney General will be allowed to appoint a "designee," rather than a "designated assistant," which allows the appointment of someone not employed by that agency. The Commissioner of Education will no longer be represented on the commission. The number of law enforcement officers on the commission is increased from four to five, with all required to be of the rank of sergeant or below. Previously, one of the four officers could be above the rank of sergeant.

The bill amends s. 943.1395, F.S., to provide that the commission may inspect the employing agency's records to ensure compliance with s. 943.1395(5), F.S., which requires agency investigation of officers who are suspected of not meeting the requirements of ss. 943.13(4) and 943.13(7), F.S. (misdemeanor involving perjury or false statement, any felony, or moral character issues).

It also provides for a tolling of the time limits on the commission's investigation and determination of matters that may lead to an officer's certification revocation under s. 943.1395(6)(a), F.S., when an appeal is pending. It also provides for an officer or his or her attorney to review documents and other related information gathered during the investigation, not more than 30 days before the results are presented to a probable cause panel.

The bill requires the commission to conduct a workshop to "receive public comment" and evaluate disciplinary guidelines and penalties every other year. A twelve-member advisory panel, appointed by the commission chair, will make recommendations to the commission concerning disciplinary guidelines.

Under the provisions of the bill, if an employing agency disciplines an officer but keeps the officer employed, the Criminal Justice Professionalism Program, rather than a probable cause panel, will review the agency action for compliance with commission rules. The commission is authorized to adopt rules as necessary to fulfill the new functions set forth in the bill.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 39-0; House 116-0

SEXUAL PREDATORS AND OFFENDERS

SB 1774 — Records/Sexual Predators and Offenders

by Senators Villalobos, Lynn, Cowin, Campbell, and Crist

This bill will require a state agency or a governmental subdivision, before appointing or hiring someone to work or volunteer at a park, playground, day care center, or other place where children regularly congregate, to search the sexual predator and sexual offender registration records at the Florida Department of Law Enforcement (FDLE) using the applicant's name or other identifying information. The search can be done using the Internet site maintained by the FDLE.

The legislation also provides an exception to conducting these searches if the state agency or governmental subdivision has performed a state and national criminal history background check on the applicant. The requirement to search sexual registration information is an attempt to prohibit an applicant who is a designated sexual predator or sexual offender from being able to work or volunteer around children.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 109-0

CS/SB 2054 — Sexual Predators and Offenders

by Criminal Justice Committee and Senators Campbell, Fasano, and Aronberg

The bill amends s. 775.21, F.S., to require that a person civilly committed as a sexually violent predator be designated as a sexual predator for registration purposes by the court involved in the civil commitment.

The bill amends ss. 775.21 and 943.0435, F.S., to require sexual predators and sexual offenders who vacate a permanent residence and do not establish or maintain another residence to report to the Florida Department of Law Enforcement (FDLE) or the local sheriff where the person is located within 48 hours after vacating the residence and provide the date the residence was vacated, update registration information, and provide an address where the person will be during the time when no residence is established or maintained.

If the sexual predator or sexual offender remains at a permanent residence after having reported vacating the premises, he or she has to return to FDLE or the sheriff within 48 hours after the date he or she indicated the residence would be vacated and report that fact. Failure to make this report is a second degree felony.

The bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to modify the definition of "conviction" under these registration statutes to indicate that conviction includes an entry of a guilty plea or nolo contendere resulting in a sanction.

The bill amends ss. 775.21, 943.0435, and 944.607, F.S., to indicate where venue may occur for the purpose of prosecuting violations of the registration laws.

The bill amends ss. 775.21, 943.0435, and 944.607, F.S., to provide that an arrest on charges of failure to register, the service of an information or a complaint for a violation of these sections, as applicable to the predator or offender, or an arraignment on charges for such violation, constitutes actual notice of the duty to register when the predator or offender has been provided and advised of his or her statutory obligation to register. The failure of a sexual predator or sexual offender to immediately register as required following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual predator or sexual offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required. A sexual predator or sexual offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register. Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual predator or sexual offender of criminal liability for the failure to register.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 39-0; House 116-0

VICTIMS AND PUBLIC PROTECTION

SB 120 — Sexual Offenders

by Senators Fasano, Lynn, Hill, and Cowin

This bill amends the conditional release statute (s. 947.1405, F.S.), to specify that certain sex offenders under conditional release cannot live within 1,000 feet of a designated public school bus stop. Under current law such offenders are prohibited from living within 1,000 feet of a "school, day care center, park, playground, or other place where children regularly congregate." As of October 1, 2004, a releasee subject to the statute will be prohibited from moving to a location within the 1,000-foot buffer zone. Conversely, as of the same date, district school boards must relocate any existing school bus stop and cannot establish a new school bus stop if the site is within 1,000 feet of the existing residence of a releasee who is subject to the statute. The Department of Corrections is required to notify the school district of the intended residence of a conditional releasee 30 days prior to release from prison. If the releasee moves, the department must notify the school district of the releasee's new residence within 30 days of the move.

The bill also creates s. 794.065, F.S., prohibiting persons convicted for committing certain sex offenses after October 1, 2004, from living within 1,000 feet of a school, day care center, park, or playground if their victim was under 16 years old. Violation of the prohibition would constitute a new crime, with the level depending upon the classification of the qualifying offense.

If approved by the Governor, these provisions take effect October 1, 2004.
Vote: Senate 39-0; House 116-0

HB 495 — Protective Injunctions

by Rep. Planas and others (CS/SB 1568 by Criminal Justice Committee and Senators Crist and Lynn)

This bill (Chapter 2004-17, L.O.F.) brings the statute governing protective injunctions for sexual violence (s. 784.046, F.S.), into conformity with the domestic violence injunction statute as it relates to victim address confidentiality. Specifically, it allows a victim of sexual violence to submit his or her address to the court in a separate confidential filing when petitioning the court for a protective injunction, if the victim needs to keep his or her location confidential for safety reasons.

It removes the statutory language instructing the Department of Corrections (DOC) to serve respondents of protective injunctions against sexual violence if they are in the custody of the DOC.

In addition, the bill makes willful violation of a protective injunction against sexual violence a first degree misdemeanor, which is the same penalty currently provided for willfully violating a protective injunction against repeat, dating, or domestic violence. It also includes violation of a sexual violence injunction as aggravated stalking, if the person knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.

Finally, it eliminates duplicative language in s. 901.15(10), F.S., which gives a law enforcement officer warrantless arrest authority when probable cause exists that a person has knowingly committed an act of repeat violence in violation of a repeat violence injunction.

These provisions were approved by the Governor and take effect July 1, 2004.
Vote: Senate 37-0; House 117-0

CS/SB 1118 — Lauren Book Protection Act

by Criminal Justice Committee and Senators Cowin and Lynn

Creates s. 921.244, F.S., requiring that a sentence for an offender who is convicted of violating s. 794.011, F.S. (sexual battery), or s. 800.04, F.S. (lewd and lascivious offense upon or in the presence of a person under 16 years old), must include an order prohibiting the offender from

having contact with the victim of the offense for the duration of the sentence. The court may reconsider the no-contact order upon request of a victim who is at least 18 years old at the time of the request. Before granting such a request, the court must hold an evidentiary hearing to determine whether there has been a change in circumstances and whether modification or rescission of the order is in the best interests of the victim.

Two new felony offenses are created by this bill. New s. 921.244(2), F.S., makes violation of the no-contact order an unranked third degree felony. Section 748.048(7), F.S., creates a new form of aggravated stalking, classified as a third degree felony with a Level 7 offense severity ranking, if the actions that violate the no-contact order include the elements of stalking. The sentence for either of the new offenses must run consecutive to any sentence imposed for violating s. 794.011, F.S., or s. 800.04, F.S.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 39-0; House 118-0