



Justice Council

**Tuesday, April 25, 2006
9:00 AM – 10:00 AM
404 House Office Building**

Meeting Packet

**Allan G. Bense
Speaker**

**Bruce Kyle
Chair**

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Justice Council

Start Date and Time: Tuesday, April 25, 2006 09:00 am
End Date and Time: Tuesday, April 25, 2006 10:00 am
Location: 404 HOB
Duration: 1.00 hrs

Consideration of the following bill(s):

HB 199 Sovereign Immunity by Patterson
HB 495 CS Baker County by Bean
HB 591 CS Electronic Monitoring by Ambler
HB 827 CS Pretrial Release by Planas
HB 1239 Child Abuse by Detert
HB 1457 CS Youth Custody Officers by Lopez-Cantera

NOTICE FINALIZED on 04/24/2006 16:20 by COCHRAN.MARGARET

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 199 Sovereign Immunity
SPONSOR(S): Patterson and others
TIED BILLS: IDEN./SIM. BILLS: SB 124

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----------------------------------------------|-----------------|----------------|----------------|
| 1) <u>Claims Committee</u> | <u>5 Y, 0 N</u> | <u>Birtman</u> | <u>Birtman</u> |
| 2) <u>Judiciary Appropriations Committee</u> | <u></u> | <u></u> | <u></u> |
| 3) <u>Justice Council</u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

HB 199 provides that an employing law enforcement agency is not liable for certain damages caused by a person fleeing from a law enforcement officer in a motor vehicle (hot pursuit) if:

1. the pursuit is not conducted in a reckless manner;
2. the officer reasonably believes that the person fleeing has committed a forcible felony; and
3. the pursuit is conducted pursuant to a specified written policy governing high-speed pursuit, and the officer received instructional training on such policy.

The bill includes a severability clause in the event that any provision of the act is held invalid. The act applies to causes of action that accrue on or after the effective date of the act; the act takes effect upon becoming a law.

This bill may have a positive fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – this bill eliminates the liability of the government for injuries caused by a person attempting to elude law enforcement under specific circumstances.

Safeguard individual liberty – this bill decreases the opportunity of those injured by a person attempting to elude law enforcement from obtaining a judgment against a law enforcement agency.

Promote personal responsibility – this bill focuses legal responsibility on the person who is attempting to flee law enforcement, rather than on the law enforcement agency.

B. EFFECT OF PROPOSED CHANGES:

Fleeing or attempting to elude a law enforcement officer – The basic dilemma associated with high speed chases conducted by law enforcement is whether the benefits of potential apprehension of the suspect outweigh the risk of endangering the law enforcement officer, the suspect, and the public.¹ A study conducted by the National Institute of Justice indicated that the importance of the perceived severity of the offense committed by the fleeing suspect was the major factor in determining whether or not police should engage in or continue a chase.² A sampling of local law enforcement pursuit policies³ reveals that the determination to initiate a vehicle pursuit involves a balancing test that requires consideration of the following sample factors:

- the seriousness of the offense;
- the safety of the public;
- the safety of the fleeing perpetrator;
- the volume of vehicular and pedestrian traffic;
- the geographical conditions of the location;
- time of day;
- quality of radio communications between the deputy, dispatcher, and supervisor;
- weather conditions;
- the type of road;
- speeds involved;
- whether the suspect can be apprehended by other means; and
- the demeanor of pursuing deputies.

Current Florida law provides that any person who 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 fleeing causes serious bodily injury or death to another person, commits a first degree felony.⁴

Sovereign immunity – Sovereign immunity is a doctrine that prohibits suits against the government without the government's consent. The Florida Constitution addresses sovereign immunity in Article X, section 13 as follows:

Suits Against the State.—Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

¹ “Police Pursuit: Policies and Training,” by Geoffrey P. Alpert, National Institute of Justice Research in Brief, May, 1997.

² Id at 7.

³ The Florida Sheriff's Self-Insurance Trust Fund provided the pursuit policies of the Hillsborough County Sheriff's Office; the Orange County Sheriff's Office; the Lee County Sheriff's Office; and the Citrus County Sheriff's Office.

⁴ Section 316.1935(3)(b), F.S.

In 1973, the Florida Legislature enacted a limited waiver of sovereign immunity in section 768.28, F.S. This section provides that the state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances. Sovereign immunity extends to all state agencies or subdivisions of the state, which by statutory definition includes the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority.⁵ Liability does not include punitive damages⁶ or interest for the period before judgment.

The statute imposes a \$100,000 limit per person, and a \$200,000 limit per incident, on the collectability of any tort judgment based on the government's liability. These limits do not preclude plaintiffs from obtaining judgments in excess of the statutory cap; however, plaintiffs cannot force the government to pay damages that exceed the recovery cap. Florida law requires a claimant to petition the Legislature in accordance with its rules, to seek an appropriation to pay a judgment against the state or state agency.⁷ In fact, the legislative appropriation is the sole method to compensate a tort claimant in an amount that exceeds the caps,⁸ and such act is considered a matter of legislative grace.⁹

Section 768.28(9)(a), F.S., provides that the exclusive remedy for injury or damage suffered by an act, event, or omission of a government employee acting within the course and scope of their employment is by action against the governmental entity, unless such act was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Notwithstanding the limited waiver of sovereign immunity provided in statute, Florida courts have found that a government entity is not liable where such entity is involved in a discretionary or planning-level function. The Florida Supreme Court reasoned that under the constitutional separation of powers doctrine that "certain policy-making, planning, or judgmental governmental functions cannot be the subject of traditional tort liability."¹⁰ An act is considered discretionary if it involves fundamental questions of policy or planning.¹¹

Conversely, the Florida Supreme Court has held that operational functions of the government are subject to liability. An act is considered operational if it reflects a secondary decision as to how policies or plans will be implemented.¹² The Court has further held that where a defendant's conduct creates a foreseeable zone of risk, the law generally will recognize a duty to either lessen the risk or provide a warning.¹³

In 1992 in a case called *Pinellas Park v. Brown*, the Florida Supreme Court found that police who initiated a hot-pursuit which resulted in the fleeing vehicle striking the vehicle of innocent bystanders and killing them, owed a legal duty to the victims.¹⁴ "We think the rule is that the officer should take

⁵ Section 768.28(2), F.S.

⁶ Punitive damages are distinguished from compensatory damages in that punitive damages are intended to punish the defendant for a wrong aggravated by violence, malice, fraud, or wanton or wicked conduct on the part of the defendant. *Black's Law Dictionary* (5th Edition 1979). In Florida, a non-government defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. Section 768.72, F.S.

⁷ Section 11.066, F.S.

⁸ Notwithstanding the limited waiver of sovereign immunity provided by statute, the government may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action of the Legislature, but the government shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of obtaining insurance coverage for tortuous acts in excess of the statutory caps. Section 768.28(5), F.S.

⁹ See *Gamble v. Wells*, 450 So.2d 850, 852 (Fla. 1984).

¹⁰ *Commercial Carrier Corp. v. Indian River County*, 371 So.2d 1010 (Fla. 1979).

¹¹ *Pinellas Park v. Brown*, 604 So.2d 1222 (Fla. 1992).

¹² *Id.*

¹³ *Kaisner v. Kolb*, 543 So.2d 732 (Fla. 1989).

¹⁴ 604 So.2d 1222 (Fla. 1992).

such steps as may be necessary to apprehend the offender but in doing so, not exceed proper and rational bounds nor act in a negligent, careless or wanton manner.”¹⁵ The Court further held that the police were not protected by sovereign immunity as the hot pursuit was operational in nature: not necessary to or inherent in policy or planning.¹⁶ In the Pinellas Park case, the Legislature ultimately authorized and directed Pinellas County to pay the surviving parents of the victims \$1.6 million.¹⁷

HB 199 creates an incentive for law enforcement agencies to enact policies that govern high speed chases, and to provide training to the officers who will implement such policies. The bill provides that the employing agency of a law enforcement officer as defined in s. 943.10, F.S.¹⁸ is not liable for injury, death, or property damage effected or caused by a person fleeing from a law enforcement officer in a motor vehicle if:

1. the pursuit is conducted in a manner that does not involve conduct by the officer that is so reckless or wanting in care as to constitute disregard of human life, human rights, safety, or the property of another;¹⁹
2. at the time the pursuit is initiated, the officer reasonably believes that the person fleeing has committed a forcible felony as defined in s. 776.08, F.S.²⁰; and
3. the pursuit is conducted pursuant to a written policy governing high-speed pursuit adopted by the employing agency. The policy must contain specific procedures for initiating and terminating high-speed pursuits. In addition, the officer must have received training from the employing agency on such written policy.

The act applies to causes of action that accrue on or after the effective day of the act.

C. SECTION DIRECTORY:

Section 1 amends s. 768.28, F.S., to provide immunity to employing law enforcement agencies for damages caused by a person fleeing from law enforcement under specified circumstances.

Section 2 provides a severability clause.

Section 3 provides applicability to actions that accrue on or after the effective date, and provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹⁵ Id at 1226, quoting *City of Miami v. Home*, 198 So.2d 10, 13 (Fla. 1967), which held that city was not liable for the wrongful death of a third party killed by an offender attempting to escape from the pursuing officer.

¹⁶ Id at 1226.

¹⁷ Ch. 95-512, L.O.F. The total jury verdict was for \$7,018,976.

¹⁸ Section 943.10, F.S., defines “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality of the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

¹⁹ The use of the term “reckless” infers a standard of negligence that is in between simple negligence (failure to use such care as a reasonably prudent and careful person would use under similar circumstances) and gross or criminal negligence (intentional failure to perform a manifest duty in reckless disregard of the consequences affecting the life or property of another.) *Black’s Law Dictionary*, 5th Edition, pp. 930-931.

²⁰ “Forcible felony” is defined in s. 776.08, F.S., to include treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill may reduce the number of claim bills filed for damages caused by a person fleeing law enforcement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill may reduce the insurance premiums paid by law enforcement agencies.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be cases in which the employing law enforcement agency is not liable, leaving only the individual law enforcement officer and/or the person fleeing as available defendants.

D. FISCAL COMMENTS:

Since the Pinellas Park v. Brown case was decided by the Florida Supreme Court in 1992, the amount per claim paid by the Florida Sheriff's Self-Insurance Fund for damages in high speed pursuit cases doubled. Between 1992 and 2006, the Florida Sheriff's Self-Insurance Fund paid a total of \$10,414,993.²¹ In the past 10 years, the Legislature has passed 7 claim bills compensating individuals for damages caused by a person fleeing law enforcement, authorizing the payment of \$12,508,829.²² This amount includes \$1.6 million paid by the Pinellas County Sheriff's Office to Lawrence Brown, subject of the City of Pinellas Park v. Brown case decided by the Florida Supreme Court.²³ It is expected that this bill will decrease the number of claims against local law enforcement agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Access to Courts: Article I, Section 21 of the Florida Constitution provides, "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or

²¹ Information provided by the Florida Sheriff's Self Insurance Fund.

²² See chapters 95-512, 95-471, 99-406, 00-428, 00-430, 01-302, and 02-329, L.O.F.

²³ See chapter 95-512, L.O.F.

delay.” Where citizens have enjoyed a historical right of access to the courts, the Legislature can only eliminate a judicial remedy under two circumstances: a valid public purpose coupled with a reasonable alternative,²⁴ or an overriding public necessity.²⁵ Because citizens did not enjoy a right to sue the government prior to the adoption of the 1968 Florida Constitution or in common law adopted by statute, and because Article X, section 13 of the Florida Constitution gives the Legislature the power to provide for suits against the state by general law, it would appear that a challenge to HB 199 based upon access to courts provisions would not be viable.

HB 199 does include a severability clause which provides that in the event that any provision of the act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which can be given effect. The Florida Supreme Court has held that the absence of a severability clause does not prevent the court from exercising its inherent power to preserve the constitutionality of an act by the elimination of invalid clauses.²⁶ Conversely, the Court indicated that the presence of a severability clause will not prevent the court from throwing out the whole act if, in its opinion, to preserve a remainder would produce an unreasonable, unconstitutional, or absurd result.²⁷

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

²⁴ Kluger v. White, 281 So.2d 1 (Fla. 1973).

²⁵ Rotwein v. Gersten, 36 So.2d 419 (Fla. 1948).

²⁶ Small v. Sun Oil Co., 222 So.2d 196 (Fla. 1969).

²⁷ Id.

1 A bill to be entitled
 2 An act relating to sovereign immunity; amending s. 768.28,
 3 F.S.; providing that a law enforcement agency is not
 4 liable for injury, death, or property damage effected or
 5 caused by a person fleeing a law enforcement officer under
 6 certain circumstances; providing for severability;
 7 providing for application; providing an effective date.

8

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

10

11 Section 1. Paragraph (d) is added to subsection (9) of
 12 section 768.28, Florida Statutes, to read:

13 768.28 Waiver of sovereign immunity in tort actions;
 14 recovery limits; limitation on attorney fees; statute of
 15 limitations; exclusions; indemnification; risk management
 16 programs.--

17 (9)

18 (d) The employing agency of a law enforcement officer as
 19 defined in s. 943.10 is not liable for injury, death, or
 20 property damage effected or caused by a person fleeing from a
 21 law enforcement officer in a motor vehicle if:

22 1. The pursuit is conducted in a manner that does not
 23 involve conduct by the officer that is so reckless or wanting in
 24 care as to constitute disregard of human life, human rights,
 25 safety, or the property of another;

26 2. At the time the law enforcement officer initiates the
 27 pursuit, the officer reasonably believes that the person fleeing
 28 has committed a forcible felony as defined in s. 776.08; and

29 3. The pursuit is conducted by the officer pursuant to a
30 written policy governing high-speed pursuit adopted by the
31 employing agency. The policy must contain specific procedures
32 concerning the proper method to initiate and terminate high-
33 speed pursuits. The law enforcement officer must have received
34 instructional training from the employing agency on the written
35 policy governing high-speed pursuit.

36 Section 2. If any provision of this act or its application
37 to any person or circumstance is held invalid, the invalidity
38 does not affect other provisions or applications of this act
39 which can be given effect without the invalid provision or
40 application, and to this end the provisions of this act are
41 severable.

42 Section 3. This act shall take effect upon becoming a law
43 and shall apply to causes of action that accrue on or after the
44 effective date.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 495 CS Baker County
SPONSOR(S): Bean
TIED BILLS:

IDEN./SIM. BILLS:

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--------------------------------------|-----------------------|----------------|-----------------------|
| 1) <u>Local Government Council</u> | <u>7 Y, 0 N, w/CS</u> | <u>Nelson</u> | <u>Hamby</u> |
| 2) <u>Criminal Justice Committee</u> | <u></u> | <u></u> | <u></u> |
| 3) <u>Justice Council</u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

The CS for HB 495 specifies the rights of certain employees and appointees of the Baker County Sheriff. The bill provides that an employee or appointee of the sheriff to whom the act applies will attain career service status once he or she has completed an initial or extended probationary period. "Initial probationary period" is defined to mean one year of conditional employment or appointment commencing on the date of actual work in a position. If a person is reemployed at a later date, he or she is required to complete the probationary period.

The bill provides that when a newly elected or appointed sheriff assumes office, all career service status employees and appointees will remain employees of the new administration unless cause for dismissal exists. The new sheriff may demote certain employees one rank or position classification, and adjust their base salaries accordingly.

The bill also provides for the membership of career service appeals boards, and provides a procedure for appeals of disciplinary suspensions or dismissals. The sheriff retains the right of final determination in all such matters.

The bill additionally provides that the sheriff may adopt such rules as are necessary for the implementation and administration of this act, and that nothing in the act is to be construed as affecting the budget-making powers of the Board of County Commissioners of Baker County.

The bill does not cover the nondisciplinary dismissal of employees or appointees such as actions arising from a reduction in force, layoff, or partial or total abolition or cessation of a program, service, operation, department, subdivision, or grant-funded position.

The bill has an effective date of upon becoming law.

According to the Economic Impact Statement, the bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

This bill authorizes the sheriff to adopt such rules as are necessary for the implementation and administration of the act. The bill also creates career service appeals boards to hear employee disciplinary cases.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Sixty-six of Florida's 67 counties have elected sheriffs as their chief law-enforcement officers. Miami-Dade County has an appointed chief law-enforcement officer whose title is Director of the Miami-Dade Police Department. Sheriffs serve four-year terms, and have county-wide jurisdiction that includes incorporated as well as unincorporated areas.

Pursuant to s. 14, Art. III of the State Constitution, s. 125.01(1)(u), F.S., and s. 30.53, F.S., a civil service system for sheriff's employees may be created by local governments via local ordinance. Section 14 of Art. III of the State Constitution provides:

By law there shall be created a civil service system for state employees, except those expressly exempted, and there may be created civil service systems and boards for county, district or municipal employees and for such offices thereof as are not elected or appointed by the governor, and there may be authorized such boards as are necessary to prescribe the qualifications, method of selection and tenure of such employees and officers.

The powers of the governing body of a county are set forth in s. 125.01, F.S. This power includes the authority, as provided in paragraph (u) of subsection (1) of s.125.01, F.S., to "[c]reate civil service systems and boards." While the independence of a sheriff is preserved in s. 30.53, F.S., that section contains a further provision that it not be construed to "restrict the establishment or operation of any civil service system" or board created pursuant to s. 14, Art. III of the State Constitution. See, also, City of Casselberry v. Orange County Police Benevolent Association, 482 So. 2d 336 (Fla. 1986) (providing that local governments are vested with the authority to establish civil service systems via local ordinance).

A number of sheriffs have civil service systems established by the Legislature through special act, including: Alachua (chs. 84-388 and 86-342, L.O.F.), Bay (ch. 84-390, L.O.F.), Brevard (ch. 83-373, L.O.F.), Broward (ch. 93-370, L.O.F.), Charlotte (chs. 79-436, 86-349 and 89-508, L.O.F.), Citrus (ch. 2001-296, L.O.F.), Clay (chs. 89-522 and 93-379, L.O.F.), Columbia (ch. 2004-413, L.O.F.), Escambia (ch. 89-492, L.O.F.), Flagler (chs. 90-450 and 2000-482, L.O.F.), Glades (ch. 2003-311, L.O.F.), Hernando (ch. 2000-414, L.O.F.), Indian River (ch. 2002-355, L.O.F.), Lake (chs. 90-386, 93-358 and 2005-349, L.O.F.), Lee (chs. 74-522, 87-547 and 95-514, L.O.F.), Leon (ch. 83-456, L.O.F.), Madison (95-470), Manatee (89-472), Marion (87-457), Martin (93-388), Monroe (78-567, 89-410, 89-461, 97-345 and 98-507, L.O.F.), Okaloosa (chs. 81-442, 85-472 and 90-492, L.O.F.), Orange (ch. 89-507, L.O.F.), Osceola (chs. 89-516 and 2000-388, L.O.F.), Palm Beach (chs. 93-367, 99-437 and 2004-404, L.O.F.), Pasco (ch. 90-491, L.O.F.), Pinellas (chs. 89-404 and 90-395, L.O.F.), Polk (chs. 88-443 and 98-516, L.O.F.), St. Lucie (ch. 89-475, L.O.F.), Santa Rosa (ch. 2002-385, L.O.F.), Sarasota (ch. 86-344, L.O.F.), and Seminole (ch. 77-653, 80-612, 88-451 and 97-376, L.O.F.) counties.

The Baker County Sheriff's Office currently does not have a civil service system.¹

Proposed Changes

The CS for HB 495 provides for career service status for certain employees and appointees of the Baker County Sheriff. The act applies to all certified and noncertified persons appointed or employed by the Baker County Sheriff, with the following exceptions:

- chiefs, or in the event of a title change, the highest ranked certified law enforcement officers reporting directly to the sheriff;
- special deputy sheriffs appointed under s. 30.09(4), F.S.²;
- members of a sheriff's posse or reserve unit;
- part-time appointees and employees, whether compensated or not, who are scheduled to work less than 40 hours per week;
- independent contractors, temporary employees or contract employees; and
- persons who are appointed or employed pursuant to a grant whose continued existence or funding is subject to the expiration or withdrawal of the grant provider.

The bill provides that an employee or appointee of the sheriff to whom the act applies will be considered to have attained career service status once he or she has completed the initial or extended probationary period. "Initial probationary period" is defined to mean one year of conditional employment or appointment commencing on the date of actual work in a position. Employment with the sheriff's office while in a Criminal Justice Standards and Training Commission-approved academy or other comparable training for certification as a sworn officer of deputy sheriff is not considered in determining whether an employee has attained one calendar year of minimal service. If a person leaves the sheriff's office and is reemployed at a later date, he or she is required to complete the probationary period before becoming eligible for any rights under the act. During the probationary period, the sheriff may dismiss an employee at any time without granting any appeal rights.

A person who has attained career service status may only be suspended or dismissed for cause. Such a person must be provided with written notice, offered an opportunity to respond, and may appeal the suspension or dismissal to a career service appeals board.

The bill provides that when a newly elected or appointed sheriff assumes office, all career service status employees and appointees will remain employees of the new administration unless cause for dismissal exists. The new sheriff may demote employees holding the rank of chief and lieutenant to one rank below the rank held on the day before he or she assumes office, and adjust their regular base salaries accordingly. The bill also provides that a new sheriff may assign the personnel/budget director and the former sheriff's secretary to the next lowest position classification, with an adjustment to their regular base salaries.

The bill provides that the membership of the career service appeals boards consists of five employees of the sheriff's office. Two members are to be selected by the employee filing the appeal, two members selected by the sheriff, and the fifth member, who serves as the chair, is selected by the other four members. The bill provides a procedure with respect to appeals, and the issuance of written

¹ The terms "civil service system" and "career service system" are used interchangeably.

² This section designates special deputy sheriffs appointed by the sheriff: (a) to attend elections on election days; (b) to perform undercover investigative work; (c) for specific guard or police duties in connection with public sporting or entertainment events, not to exceed 30 days; or for watch or guard duties, when serving in such capacity at specified locations or areas only; (d) for special and temporary duties, without power of arrest, in connection with guarding or transporting prisoners; (e) to aid in preserving law and order, or to give necessary assistance in the event of any threatened or actual hurricane, fire, flood or other natural disaster, or in the event of any major tragedy such as an act of local terrorism or a national terrorism alert, an airplane crash, a train or automobile wreck, or a similar accident; (f) to raise the power of the county, by calling bystanders or others, to assist in quelling a riot or any breach of the peace, when ordered by the sheriff or an authorized general deputy; (g) to serve as a parking enforcement specialist pursuant to s. 316.640(2), F.S.

recommendations by the board. The bill also provides that the sheriff retains the right of final determination in such matters.

The act additionally provides that the sheriff may adopt such rules as are necessary for the implementation and administration of this act, and that nothing in the act is to be construed as affecting the budget-making powers of the Board of County Commissioners of Baker County.

The act does not cover the nondisciplinary dismissal of employees or appointees such as actions arising from a reduction in force, layoff, or partial or total abolition or cessation of a program, service, operation, department, subdivision, or grant-funded position.

The bill has an effective date of upon becoming law.

SECTION DIRECTORY:

Section 1: Provides certain Baker County Sheriff employees and appointees with career service status; provides transition provisions; and provides for implementation and administration of the act.

Section 2: Provides for career service appeals boards.

Section 3: Provides for severability.

Section 4: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 18 and 19, 2006

WHERE? *The Baker County Press and The Baker County Standard*; weekly newspapers published in Baker County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill authorizes the sheriff to adopt such rules as are necessary for the implementation and administration of the act, although it is specified that nothing in the act may be construed as affecting the budget-making powers of the Board of County Commissioners of Baker County.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Local Government Council adopted a strike-all amendment which provides:

- technical changes to the bill;
- a one-year probationary period;
- provisions with respect to disciplinary suspension and dismissal; and
- for career service appeals boards, and an appeals procedure.

CHAMBER ACTION

1 The Local Government Council recommends the following:

3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to Baker County; providing career service
7 status for certain employees of the Baker County Sheriff's
8 Office; providing definitions; providing for transition
9 between administrations; providing for appeals procedures;
10 providing for career service appeals boards; providing
11 proceedings and provisions with respect to disciplinary
12 suspension and dismissal; providing severability;
13 providing an effective date.

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

17 Section 1. Employees and appointees of the Baker County
18 Sheriff's Office; applicability of act; definitions; career
19 service status; transitions; administration.--

20 (1) APPLICABILITY.--The provisions of this act apply to
21 all certified and noncertified persons appointed or employed by
22 the Baker County Sheriff's Office, with the following
23 exceptions:

HB 495

2006
CS

24 (a) Chiefs or, in the event of a title change, the highest
 25 ranked certified law enforcement officers reporting directly to
 26 the sheriff.

27 (b) Special deputy sheriffs appointed under section
 28 30.09(4), Florida Statutes.

29 (c) Members of a sheriff's posse or reserve unit.

30 (d) Part-time appointees and employees.

31 (e) Independent contractors, temporary employees, or
 32 contract employees.

33 (f) Appointees and employees employed pursuant to a grant
 34 whose continued existence or funding is subject to the
 35 expiration or withdrawal of the grant provider.

36 (2) APPLICATION TO COLLECTIVE BARGAINING.--This act does
 37 not grant the right of collective bargaining to employees of the
 38 sheriff's office who do not otherwise have that right pursuant
 39 to law.

40 (3) NONDISCIPLINARY DISMISSALS.--This act does not cover
 41 the nondisciplinary dismissal of employees or appointees. Such
 42 nondisciplinary dismissals include those arising from a
 43 reduction in force, layoff, or partial or total abolition or
 44 cessation of a program, service, operation, department,
 45 subdivision, or grant-funded position.

46 (4) DEFINITIONS.--

47 (a) "Appointee" means a person selected by the sheriff to
 48 serve in the position of deputy sheriff or correctional officer
 49 who is certified within the meaning of chapter 943, Florida
 50 Statutes.

51 **(b) "Career appeals board" means the ad hoc board**
 52 **authorized under this act to hear disciplinary appeals.**

53 **(c) "Dismissal" means the discharge or withdrawal of**
 54 **appointment by the sheriff or his or her designee of a person**
 55 **employed or appointed to a position with the sheriff's office.**

56 **(d) "Employee" means any person employed by the sheriff**
 57 **for a position which does not require certification under**
 58 **chapter 943, Florida Statutes.**

59 **(e) "Initial probationary period" means 1 year of**
 60 **conditional employment or appointment commencing on the initial**
 61 **date of actual work and continuing for 12 months in a regularly**
 62 **established position. This probationary period may be extended**
 63 **at the discretion of the sheriff for a period equal to any work**
 64 **absences during the 12-month period. For the purpose of**
 65 **determining career service status pursuant to paragraph (5)(a),**
 66 **all time in the employment of the sheriff's office, while in a**
 67 **Criminal Justice Standards and Training Commission-approved**
 68 **academy or other comparable training for certification as a**
 69 **sworn officer or deputy sheriff, shall not be considered in any**
 70 **manner in determining whether the employee has attained a**
 71 **minimum of 1 calendar year of service.**

72 **(f) "Reemployment" means the reappointment or reemployment**
 73 **of a person who was previously an appointee or employee of the**
 74 **sheriff's office.**

75
 76 **For the purposes of this act, "appointee" and "employee" are**
 77 **synonymous and any derivative of "employ" refers to the persons**
 78 **to whom this act applies.**

79 (5) CAREER SERVICE STATUS.--

80 (a) After any employee or appointee of the sheriff to whom
 81 the provisions of this act apply has completed the initial or
 82 extended probationary period, such person shall have attained
 83 career service status in the sheriff's office. If such person is
 84 reemployed at a later date, said person shall be required to
 85 again complete the probationary period before being granted the
 86 right of appeal provided in section 2.

87 (b) The sheriff may dismiss an appointee or employee who
 88 has not completed the initial or extended probationary period at
 89 any time without granting the right of appeal provided in
 90 section 2.

91 (c) Any person who has attained career service status with
 92 the sheriff's office may only be suspended or dismissed for
 93 cause, provided that, prior to such action, the employee must be
 94 provided with written notice of the proposed action and offered
 95 an opportunity to respond to the reasons for the suspension or
 96 dismissal. If, however, the sheriff perceives a significant
 97 hazard in keeping the employee on the job, or where delay could
 98 result in damage or injury, the employee may be immediately
 99 suspended or dismissed without notice, provided, that the
 100 employee is provided with such notice and reasons within 24
 101 hours. Cause for suspension or dismissal includes, but is not
 102 limited to, negligence, inefficiency or inability to perform
 103 assigned duties, insubordination, violation of provisions of law
 104 or office rules, conduct unbecoming a public employee,
 105 misconduct, alcohol abuse, prescription drug abuse, or illegal
 106 drug use. Cause for suspension or dismissal also includes, but

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107 is not limited to, adjudication of guilt by a court of competent
 108 jurisdiction, a plea of guilty or of nolo contendere, or a
 109 verdict of guilty when adjudication of guilt is withheld and the
 110 accused is placed on probation with respect to any felony,
 111 misdemeanor, or major traffic infraction charges.

112 (d) An employee or appointee who has achieved career
 113 service status is entitled to appeal a disciplinary suspension
 114 or dismissal to a career service appeals board.

115 (6) TRANSITION.--When a newly elected or appointed sheriff
 116 assumes office, all career service status appointees and
 117 employees shall remain employees of the new administration,
 118 unless cause for dismissal exists.

119 (a) The new sheriff may demote employees holding the rank
 120 of chief and lieutenant one rank below that held on the day
 121 before the new sheriff assumes office. The regular base salaries
 122 of these employees may be adjusted accordingly.

123 (b) The new sheriff may assign the personnel/budget
 124 director and the sheriff's secretary to the next lowest position
 125 classification within the pay and classification system, and
 126 adjust their regular base salaries accordingly.

127 (7) ADMINISTRATION.--The sheriff shall have the authority
 128 to adopt such rules and regulations as are necessary for the
 129 implementation and administration of this act; however, nothing
 130 in this act shall be construed as affecting the budget-making
 131 powers of the Board of County Commissioners of Baker County.

132 Section 2. Career service appeals boards; creation;
 133 membership; duties.--

134 (1) FUNCTION OF BOARDS.--Ad hoc career service appeals
 135 boards shall be appointed for the purpose of hearing appeals of
 136 employees having career service status arising from their
 137 disciplinary suspension or dismissal. A career service appeals
 138 board shall be utilized to make a nonbinding recommendation to
 139 the sheriff as to whether the suspension or dismissal was for a
 140 violation of sheriff's office policy, rule, regulation,
 141 procedure, or practice. Any such board may also provide
 142 assistance and advice to the sheriff in matters concerning
 143 disciplinary suspension or dismissal and may take any other
 144 actions authorized by the sheriff.

145 (2) MEMBERSHIP OF BOARD.--Upon the call of the sheriff or
 146 upon the filing of an appeal, an ad hoc career service appeals
 147 board shall be appointed. The membership of each board shall
 148 consist of five appointees or employees of the sheriff's office.
 149 Two members shall be selected by the employee or appointee
 150 filing the appeal, two members shall be selected by the sheriff,
 151 and the fifth member, who shall serve as the chair of the board,
 152 shall be selected by the other four members. Any employee may
 153 decline to serve as a member of the board.

154 (a) The hearing shall be conducted during the sheriff's
 155 office administrative office hours; therefore, employees
 156 selected to serve on the board shall serve without additional
 157 compensation. Once selected, the members of the board shall
 158 serve until the board issues its recommendations to the
 159 sheriff's office, and, unless reconvened, the board shall be
 160 dissolved.

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161 (b) The personnel/budget director or his or her designee
 162 shall serve as an ex officio member of the board for the purpose
 163 of providing procedural guidance to the board concerning the
 164 application of this act and any rules or regulations adopted by
 165 the sheriff relating thereto, but such ex officio member shall
 166 have no vote.

167 (3) PROCEDURE WITH RESPECT TO APPEALS.--An employee or
 168 appointee who has achieved career service status may submit a
 169 written request for a hearing to the sheriff or his or her
 170 designee within 7 calendar days after receiving a notice of
 171 suspension or dismissal which shall be hand-delivered or sent
 172 certified mail, return receipt requested. The appeal must
 173 contain a brief statement of the matters to be considered by the
 174 career service appeals board and the names of the employees
 175 selected to serve on the board.

176 (a) A career appeals board shall be selected and shall
 177 meet for the purpose of hearing the appeal within 30 calendar
 178 days after receipt of the notice of appeal. However, an
 179 extension of time may be granted by the chair for good cause or
 180 upon agreement of the parties.

181 (b) The person filing the appeal has the right to a public
 182 hearing; to be represented by a person of his or her choice; to
 183 present relevant evidence; and to cross examine witnesses.

184 (c) The rules of evidence and civil procedure are not
 185 applicable to hearings conducted under this act.

186 (d) The board, in conducting such hearings, shall have the
 187 power to issue subpoenas, upon the request of any party or upon
 188 its own motion.

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189 (e) The board shall, by majority vote, dispose of the
 190 appeal for which it was appointed by making findings of fact and
 191 issuing its written recommendations to the sheriff for
 192 consideration. The sheriff shall retain the right of final
 193 determination and no person may be reinstated with or without
 194 back pay or benefits without the concurrence of the sheriff.

195 Section 3. Severability.--The provisions of this act shall
 196 be severable, and if any provision is held invalid by a court of
 197 competent jurisdiction, the decision of the court shall not
 198 affect the validity of the remaining provisions except to the
 199 extent that an entire section or part of a section may be
 200 inseparably connected in meaning and effect with the section or
 201 part of a section to which such holding directly applies.

202 Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 591 CS Electronic Monitoring
SPONSOR(S): Ambler
TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|-------------------------------|----------------|------------|----------------|
| 1) Criminal Justice Committee | 6 Y, 0 N, w/CS | Cunningham | Kramer |
| 2) Judiciary Committee | | Hogge | Hogge |
| 3) Justice Council | | | |
| 4) | | | |
| 5) | | | |

SUMMARY ANALYSIS

This bill expressly authorizes courts to order the pre-trial release of defendants charged with a forcible felony or a sex-related offense for which registration is required, or having been previously convicted of such offense, is subsequently charged with any crime, subject to various conditions including electronic monitoring.

The bill permits a governmental entity or a licensed bail bond agent, meeting certain requirements, to provide monitoring services directly or by contract with a third party vendor. The electronic monitoring device must be capable of identifying the defendant's geographic position to within 9 meters using GPS technology. Defendants must pay a reasonable fee for the service.

Those providing electronic monitoring services are absolved from any liability for equipment failure or criminal acts by the defendant.

The bill requires the chief judge of each circuit to maintain a list of licensed bail bond agents meeting the standards necessary to provide electronic monitoring services. The bill also imposes standards for the electronic monitoring devices. These include, but are not limited to, meeting certain certification standards approved by the FCC, being able to emit or receive signal content 24 hours per day accurate to within 9 meters, possessing encrypted signal content, and being shock resistant.

The bill authorizes and encourages the Departments of Corrections and Juvenile Justice to use electronic monitoring systems in their respective institutions to monitor inmates and juvenile offenders and, under certain circumstances, employees, and visitors. It also requires vendor monitors to achieve certain technological and functional capabilities such as alarm speed, storage capacity, battery life, and accuracy of proximity to location.

The bill creates three new felony offenses relating to the destruction, misuse, or mimicry of electronic monitoring equipment or the recorded data contained in the equipment, for electronic monitors used within a correctional or juvenile facility.

This bill could have a significant negative fiscal impact.

This bill takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0591b.JU.doc
DATE: 3/23/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill authorizes licensed bail bond agents to provide electronic monitoring services for certain pretrial releasees; authorizes and encourages the Departments of Corrections and Juvenile Justice to use electronic monitoring in their respective institutions and to adopt rules relating thereto.

Promote Personal Responsibility → This bill creates new felony offenses related to tampering, misusing, or mimicking electronic monitoring equipment or the recorded data contained in the equipment.

Maintain Public Security → This bill authorizes electronic monitoring of certain pretrial releasees, inmates and juvenile offenders within their respective institutions, and employees and visitors of correctional and juvenile justice facilities.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Pretrial Release / Bail Bond Agents

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.¹ If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.²

Courts may impose any number of conditions of pretrial release that are intended to ensure the defendant's presence at trial. Bail, one of the most common conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. As an alternative to posting bail, a defendant may employ the services of a bail bond agent.³ Bail bond agents do not pay the bail amount, but instead act as a surety, promising to pay the bail amount if the defendant absconds. If the defendant absconds, bail bond agents are authorized to locate, detain, and bring the defendant before the sheriff. Florida bail bond agents are licensed through the Department of Financial Services.

Electronic Monitoring

Electronic monitoring is a process whereby a person's whereabouts are tracked through the use of a transmitter securely attached to the person, and a receiver that receives the transmitter's signal. Currently, electronic monitoring may be imposed as a condition of pretrial release.⁴

Currently, Florida statutes do not specifically authorize or preclude any entity from providing electronic monitoring services. Such services are currently provided by private companies that contract with the

¹ The conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130(a), Fla. R. Crim. Proc.

² Rule 3.131(a), Fla. R. Crim. Proc.

³ s. 648.25, F.S., defines "Professional bail bond agent" as any person who pledges United States currency, United States postal money orders, or cashier's checks as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

⁴ s. 907.041(4), F.S.

involved agency (Department of Corrections, Department of Juvenile Justice, counties). At this time, neither DOC nor DJJ utilize electronic monitoring systems in their respective institutions.

Florida statutes do not currently provide manufacturing standards for electronic monitoring equipment.

Effect of Proposed Changes

This bill expressly authorizes courts to order the pre-trial release of defendants charged with a forcible felony or a sex-related offense for which registration is required, or having been previously convicted of such offense, is subsequently charged with any crime, subject to various conditions including electronic monitoring.

The bill permits a governmental entity or a licensed bail bond agent, meeting certain requirements, to provide monitoring services directly or by contract with a third party vendor. If provided through a third party vendor, the bail bond agent retains primary responsibility for the monitoring. The electronic monitoring device must be capable of identifying the defendant's geographic position to within 9 meters using GPS technology. Defendants must pay a reasonable fee for the service.⁵ The bill requires bail bond agents to keep electronic monitoring records and receipts separate from bail bond records.

Those providing electronic monitoring services are absolved from any liability for equipment failure or criminal acts by the defendant. Those providing electronic monitoring services must report known violations by the defendant to the appropriate authority.

The bill requires the chief judge of each circuit to maintain a list of licensed bail bond agents that annually certify that their electronic monitoring equipment meets certain specified standards. These include meeting certain certification standards approved by the FCC, being able to emit or receive signal content 24 hours per day accurate to within 9 meters, possessing encrypted signal content, and being shock resistant. The chief judge may remove a registered vendor from the list if the vendor fails to properly monitor persons or if the vendor charges an excessive fee for monitoring services. The bill provides that a fee is clearly excessive if the fee charged on a per diem basis is at least twice the average charged by other vendors on the list.

The bill authorizes and encourages the Departments of Corrections and Juvenile Justice to use electronic monitoring systems in their respective institutions to monitor inmates and juvenile offenders and, under certain circumstances, employees, and visitors. It also requires vendor monitors to achieve certain technological and functional capabilities such as alarm speed, storage capacity, battery life, and accuracy of proximity to location.

The bill creates three new third degree felony⁶ offenses relating to the destruction, misuse, or mimicry of electronic monitoring equipment or the recorded data contained in the equipment, for electronic monitors used within a correctional or juvenile facility, as follows:

- intentionally altering, tampering with, damaging, or destroying electronic monitoring equipment used to monitor a person in a DOC/DJJ facility, unless such person is the owner of the equipment or agent of the owner performing ordinary maintenance and repairs;
- developing, building, creating, possessing, or using any device that is intended to mimic, clone, interfere with, or jam the signal of an electronic monitoring device used to monitor a person in a DOC/DJJ facility;

⁵ s. 948.33, F.S., provides that Florida bail bond agents may not execute a bail bond without charging a premium therefore. Currently, the premium rate for state bonds may not exceed 10%. <http://www.fldfs.com>.

⁶ A third degree felony is punishable by imprisonment for up to 5 years and a fine of up to \$5,000. ss. 775.082, 775.083, F.S.

- intentionally altering, tampering with, damaging, or destroying specific data stored by any electronic monitoring equipment used to monitor a person in a DOC/DJJ facility unless done so with written permission from an authorized department official or in compliance with a data-retention policy of the department adopted by rule.

These newly created offenses are unranked on the Offense Severity Ranking Chart in the Criminal Punishment Code. Thus, the third degree felonies will default to a Level 1 offense.

C. SECTION DIRECTORY:

Section 1. Amends s. 648.387, F.S., relating to the provision of electronic monitoring services by licensed bail bond agents.

Section 2. Creates s. 907.06, F.S., providing for electronic monitoring of certain persons on pretrial release; requiring the monitored person to pay fees; authorizing bail bond agents and governmental entities to provide electronic monitoring services; authorizing bail bond agents and governmental entities to subcontract to third-party vendors for electronic monitoring services in certain circumstances; requiring the entity providing electronic monitoring services to report a monitored defendant's violations of pretrial release; providing that the provision of electronic monitoring services is not an undertaking to protect the public from harm; prohibiting a monitored person from tampering with the monitoring equipment.

Section 3. Creates s. 907.07, F.S., requiring the chief judge of each circuit to maintain a list of eligible electronic monitoring vendors; requiring eligible electronic monitoring vendors to register and certify electronic monitoring equipment; providing grounds for removal from the list.

Section 4. Creates s. 907.08, F.S., providing standards for privately owned electronic monitoring devices.

Section 5. Creates s. 907.09, F.S., providing criminal penalties for tampering with, cloning the signal of, or altering or destroying data of an electronic monitoring device.

Section 6. Creates s. 944.161, F.S., providing for electronic monitoring of inmates within correctional facilities; requiring electronic monitoring of certain employees and visitors to correctional facilities; providing system requirements; providing criminal penalties for tampering with, cloning the signal of, or altering or destroying data of an electronic monitoring device; authorizing the Department of Corrections to adopt rules.

Section 7. Creates s. 985.4047, F.S., providing for electronic monitoring of juveniles within juvenile facilities; requiring electronic monitoring of certain employees and visitors to juvenile facilities; providing system requirements; providing criminal penalties for tampering with, cloning the signal of, or altering or destroying data of an electronic monitoring device; authorizing the Department of Juvenile Justice to adopt rules.

Section 8. This act takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Department of Juvenile Justice

Were it required, the estimated cost of using technology meeting the specifications outlined in the bill for monitoring within DJJ facilities would be as follows:

Total Non-Recurring Costs: \$3,060,000
Total Recurring Costs: \$3,022,521

Residential Facilities – 144

Non-Recurring Total = \$2,592,000

Servers required: 144 programs x \$15,000 (cost of server) = \$2,160,000

Antennae required: 144 programs x \$3,000 (cost of antennae sensors) = \$432,000

Recurring Total = \$2,187,258

Number of staff: 5,500 x 5 (# of ID's used weekly) x 50 weeks x \$.80 (ID cost) = \$1,100,000

Number of youth: 6,534 beds x 2 (# of ID's used weekly) x 52 weeks x \$.80 (ID cost) = \$543,629

Number of visitors: 6,534 beds x 2 (weekly visitors) x 52 weeks x \$.80 (ID cost) = \$543,629

Detention Facilities - 26

Non-Recurring Total = \$468,000

Servers required: 26 programs x \$15,000 (cost of server) = \$390,000

Antennae required: 26 programs x \$3,000 (cost of antennae) = \$78,000

Recurring Total = \$835,236

Number of staff: 2500 x 5 (# of ID's used weekly) x 50 weeks x \$.80 (ID cost) = \$500,000

Number of youth: 2,057 beds x 2 (# of ID's used weekly) x 52 weeks x \$.80 (ID cost) = \$171,143

Visitors: 17,093 (monthly visitors) x 12 months x \$.80 = \$164,093

Department of Corrections

The DOC states it would be a significant financial burden on their budget if they were required to use electronic monitoring systems in prisons. For example, according to the DOC, should the DOC be required to use an electronic monitoring system at each of their institutions, this would represent a cost of approximately \$31,000,000 (86,000 inmates x \$1 x 365 days). The cost of monitoring employees (approximately 20,000) and visitors would be in addition to this figure. The DOC states that the cost of implementing and using such a system would be at the expense of repair, replacement, and enhancement of existing facilities. For example, critical security infrastructure at several institutions could be replaced and/or enhanced for the cost of implementing an electronic monitoring system at one institution. The DOC cites little potential for staff savings should electronic monitoring systems be implemented. Ultimately, the DOC states that the cost effectiveness relative to the department's priorities does not justify the significant resource investment involved.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The DJJ states that counties pay for the cost of pre-adjudicatory detention and, thus, fund approximately 82 percent of the DJJ total detention budget. The numbers below reflect approximately 82 percent of the state detention costs outlined above.

\$384,000 – Non-recurring costs for the purchasing of startup equipment in detention centers.
\$700,000 – Recurring costs for operating the system.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed bail bond agents who meet the requirements specified in the bill will benefit in that they will be permitted to provide electronic monitoring services for certain pretrial releasees and offenders. Additionally, companies who meet the requirements specified in the bill may benefit in that they would be eligible to provide electronic monitoring services for correctional and juvenile justice facilities.

The number of vendors with electronic monitors capable of meeting the specifications provided in the bill is uncertain.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill provides a general grant of rulemaking power to the Departments of Corrections and Juvenile Justice to implement the bill's provisions (lines 396-398 and lines 519-521). The bill appears to give sufficient rule making authority that is appropriately limited.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Criminal Justice Committee adopted a strike-all amendment to the bill and reported the bill favorably with committee substitute. The strike-all amendment:

- Removed provisions of the bill relating to post-release offenders;
- Defined the terms "violent felony offense" and "sex-related offense;"
- Corrected grammatical and technical errors; and
- Eliminated the term "Radio Frequency Identification Technology" from the bill.

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to electronic monitoring; amending s.
7 648.387, F.S.; authorizing bail bond agents to be vendors
8 of electronic monitoring services; authorizing bail bond
9 agents to contract with third-party vendors to provide
10 electronic monitoring of pretrial releasees in certain
11 circumstances; authorizing bail bond agents to register
12 with a governmental entity to provide electronic
13 monitoring services in certain circumstances; authorizing
14 such agents to collect a fee for electronic monitoring
15 services; providing that failure to timely pay fees
16 constitutes grounds to remand; providing that such fees
17 are exempt from specified premium requirements; creating
18 s. 907.06, F.S.; providing for electronic monitoring of
19 certain persons on pretrial release; requiring the
20 monitored person to pay fees; providing that provision of
21 electronic monitoring equipment and services is not an
22 undertaking to protect members of the public from harm
23 occasioned by a monitored person; prohibiting a person

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24 being monitored from tampering with monitoring equipment;
 25 creating s. 907.07, F.S.; requiring the chief judge of
 26 each circuit to maintain a list of licensed bail bond
 27 agents who are eligible private vendors for provision of
 28 electronic monitoring services; requiring registration of
 29 such vendors and certification of electronic monitoring
 30 devices; providing grounds for removal from the list;
 31 creating s. 907.08, F.S.; providing standards for
 32 privately owned electronic monitoring devices; creating s.
 33 907.09, F.S.; providing criminal penalties for tampering
 34 with electronic monitoring devices; providing criminal
 35 penalties for cloning or jamming the signal of an
 36 electronic monitoring device; providing criminal penalties
 37 for the alteration or destruction of data stored or
 38 transmitted by an electronic monitoring device with
 39 specified intent; creating ss. 944.161 and 985.4047, F.S.;
 40 providing for electronic monitoring of inmates within
 41 correctional facilities and juvenile offenders within
 42 juvenile facilities, respectively; requiring such
 43 monitoring of certain employees and visitors to such
 44 facilities; providing system requirements; prohibiting
 45 specified actions relating to such monitoring systems and
 46 data from such systems; providing penalties; providing
 47 rulemaking authority; providing an effective date.

48
 49 Be It Enacted by the Legislature of the State of Florida:
 50

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51 Section 1. Subsection (6) is added to section 648.387,
52 Florida Statutes, to read:

53 648.387 Primary bail bond agents; duties; electronic
54 monitoring services by licensed bail bond agents.--

55 (6) (a) A licensed bail bond agent who meets the
56 requirements of s. 907.07 may be a vendor of electronic
57 monitoring services. A licensed bail bond agent may also
58 subcontract for such services with a third-party vendor of the
59 bail bond agent's choice provided the licensed bail bond agent
60 can certify that the equipment and services rendered by such
61 third-party vendor on the bail bond agent's behalf meet the
62 requirements of s. 907.07 for monitoring of a defendant for whom
63 the bail bond agent has provided a criminal surety bail bond. A
64 licensed bail bond agent who meets the requirements of s. 907.07
65 may additionally register with a governmental entity to provide
66 electronic monitoring services when monitoring has been ordered
67 by a court.

68 (b) A licensed bail bond agent may charge a reasonable,
69 nonrefundable fee for electronic monitoring services from a
70 person who is subject to electronic monitoring. Failure to
71 timely pay such fees constitutes grounds for the agent to remand
72 such person to the court or sheriff. Fees charged by a bail bond
73 agent associated with required electronic monitoring services
74 are not considered part of the bail bond premium and shall be
75 exempt from the provisions of s. 648.33.

76 (c) Records and receipts for electronic monitoring
77 provided by a licensed bail bond agent shall be kept separate
78 and apart from bail bond records.

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79 Section 2. Section 907.06, Florida Statutes, is created to
80 read:

81 907.06 Electronic monitoring.--

82 (1) The court may order a defendant who has been charged
83 with a forcible felony, as defined in s. 776.08, or a sex-
84 related offense, or who has been charged with any crime and who
85 has been previously convicted of a forcible felony or a sex-
86 related offense, to be released from custody on a surety bond
87 subject to conditions that include, without limitation,
88 electronic monitoring, if electronic monitoring is available in
89 the jurisdiction. For purposes of this section, the term "sex-
90 related offense" includes any of the offenses contained in s.
91 943.0435(1)(a)1.

92 (2) A defendant required to submit to electronic
93 monitoring shall pay a reasonable fee for equipment use and
94 monitoring as an additional condition of pretrial release. The
95 failure of the defendant to timely pay such fees constitutes a
96 violation of pretrial release and grounds for the defendant to
97 be remanded to the court or appropriate sheriff or law
98 enforcement agency.

99 (3) Electronic monitoring shall include the provision of
100 services to continuously receive and monitor the electronic
101 signals from the transmitter worn by the defendant so as to be
102 capable of identifying the defendant's geographic position at
103 any time to within 9 meters using Global Positioning Satellite
104 (GPS) technology, subject to the limitations related to the
105 technology and to circumstances of force majeure. Such
106 electronic monitoring services may be undertaken as a primary

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107 responsibility by a governmental entity or by a licensed bail
 108 bond agent who may provide both bail bond services and have
 109 primary responsibility or oversight for electronic monitoring
 110 services. A governmental entity or licensed bail bond agent may
 111 subcontract to a third-party vendor for electronic monitoring
 112 services, provided such third-party vendor complies with all
 113 provisions of this subsection and s. 907.08 and operates under
 114 the direction and control of the governmental entity or licensed
 115 bail bond agent with primary responsibility as the vendor for
 116 electronic monitoring. A governmental entity that elects to
 117 subcontract for electronic monitoring services shall be required
 118 to select such third-party vendor through a competitive bidding
 119 process.

120 (4)(a) Any person who provides electronic monitoring
 121 services shall report forthwith any known violation of the
 122 defendant's pretrial release conditions to the appropriate
 123 court, sheriff or law enforcement agency, state attorney, and
 124 licensed bail bond agent, if any.

125 (b)1. Notwithstanding paragraph (a), the provision of
 126 electronic monitoring services shall not be deemed to constitute
 127 an undertaking to protect members of the public from harm
 128 occasioned by a monitored person. The sole duty owed by a person
 129 who provides electronic monitoring is to give a law enforcement
 130 officer, upon request, an indication of the physical location of
 131 the monitored person at any point in time.

132 2. A person who provides electronic monitoring is not
 133 responsible to other persons for equipment failure or for the
 134 criminal acts of a monitored person. A provider of electronic

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135 monitoring services cannot control the activities of a monitored
 136 person. It is unreasonable for any member of the public to
 137 expect that a provider of electronic monitoring services will
 138 provide protection against harm occasioned by a monitored
 139 person.

140 (5) A defendant who has been released in accordance with
 141 this section shall not alter, tamper with, damage, or destroy
 142 any electronic monitoring equipment or data recorded by such
 143 equipment. A defendant who is notified of a malfunction in the
 144 equipment shall immediately cooperate with the vendor in
 145 restoring the equipment to proper functioning. A violation of
 146 this subsection constitutes a violation of pretrial release and
 147 grounds for the defendant to be remanded to the court or
 148 appropriate sheriff or law enforcement agency.

149 Section 3. Section 907.07, Florida Statutes, is created to
 150 read:

151 907.07 Vendor requirements for provision of electronic
 152 monitoring services; vendor registration and certification
 153 process.--

154 (1) This section shall not apply to electronic monitoring
 155 provided directly by the state, a county, or a sheriff.

156 (2) The chief judge of each judicial circuit shall
 157 maintain a list of all licensed bail bond agents who are
 158 eligible vendors of electronic monitoring in the circuit. For a
 159 licensed bail bond agent to be an eligible vendor, a licensed
 160 bail bond agent must register in accordance with this section as
 161 a vendor capable of providing electronic monitoring services as
 162 a primary provider or through a subcontractor in that judicial

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163 circuit. The chief judge shall place on such list of eligible
 164 vendors any licensed bail bond agent in this state who certifies
 165 in writing, as part of the vendor registration, that all
 166 electronic monitoring equipment and electronic monitoring
 167 services shall be operated and maintained in compliance with
 168 this section, and who agrees as part of such certification to
 169 comply with the terms of this section.

170 (3) Only a governmental entity, or a licensed bail bond
 171 agent who is included on a list of eligible vendors under
 172 subsection (2), shall be permitted to undertake primary
 173 responsibility as a vendor of electronic monitoring services in
 174 a judicial circuit of this state.

175 (4) A licensed bail bond agent shall agree to abide by the
 176 following minimum terms as a condition of being included on the
 177 list of eligible vendors of electronic monitoring in a given
 178 judicial circuit of this state:

179 (a) The vendor shall register in writing the name of the
 180 vendor, who must be a licensed bail bond agent in this state;
 181 the name of an individual employed by the vendor who is to serve
 182 as a contact person for the vendor; the address of the vendor;
 183 and the telephone number of the contact person.

184 (b) The vendor must initially certify as part of the
 185 registration, and must certify in writing at least annually
 186 thereafter on a date set by the chief judge, that all of the
 187 electronic monitoring devices used by the vendor and any of the
 188 vendor's subcontractors comply with the requirements for
 189 privately owned electronic monitoring devices in s. 907.08.

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190 (5) A vendor shall promptly notify the chief judge of any
 191 changes in the vendor's registration information that is
 192 required under this section.

193 (6) Failure to comply with the registration or
 194 recertification requirements of this section shall be grounds
 195 for removal from any chief judge's list of eligible vendors for
 196 electronic monitoring.

197 (7) The chief judge, in his or her discretion, may also
 198 remove any registered vendor from the list of eligible vendors
 199 if the vendor:

200 (a) Fails to properly monitor any person that the vendor
 201 was required to monitor; or

202 (b) Charges a defendant a clearly excessive fee for use
 203 and monitoring of electronic monitoring equipment. Such fees
 204 shall be considered clearly excessive if the fees charged on a
 205 per diem basis are at least twice the average fee charged by
 206 other vendors on the eligible vendor list who provide comparable
 207 electronic monitoring equipment and services in that judicial
 208 circuit.

209 Section 4. Section 907.08, Florida Statutes, is created to
 210 read:

211 907.08 Standards for privately owned electronic monitoring
 212 devices.--A privately owned electronic monitoring device
 213 provided by a vendor must, at a minimum, meet the standards set
 214 forth in this section to be used for electronic monitoring of a
 215 person under s. 907.06. A device must:

216 (1) Be a transmitter unit that meets certification
 217 standards approved by the Federal Communications Commission.

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- 218 (2) At the court's discretion, either:
 219 (a) Emit signal content 24 hours per day that identifies
 220 the specific device being worn by the defendant and the
 221 defendant's physical location using Global Positioning Satellite
 222 (GPS) technology accurate to within 9 meters; or
 223 (b) Receive signal content 24 hours per day, determining
 224 the defendant's physical location using Global Positioning
 225 Satellite (GPS) technology accurate to within 9 meters,
 226 recording the defendant's physical locations throughout the day,
 227 and being capable of transmitting that record of locations to
 228 the vendor at least daily.
 229 (3) With respect to a unit affixed to a defendant, possess
 230 an internal power source that provides a minimum of 1 year of
 231 normal operation without recharging or replacing the power
 232 source. The device must emit signal content that indicates its
 233 power status and provides the vendor with notification of
 234 whether the power source needs to be recharged or replaced.
 235 (4) Possess and emit signal content that indicates whether
 236 the transmitter has been subjected to tampering or removal.
 237 (5) Possess encrypted signal content or another feature
 238 designed to discourage duplication.
 239 (6) Be of a design that is shock resistant, waterproof,
 240 and capable of reliable function under normal atmospheric and
 241 environmental conditions.
 242 (7) Be capable of wear and use in a manner that does not
 243 pose a safety hazard or unduly restrict the activities of the
 244 defendant.

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245 (8) Be capable of being attached to the defendant in a
 246 manner that readily reveals any efforts to tamper with or remove
 247 the transmitter upon visual inspection.

248 (9) Use straps or other mechanisms for attaching the
 249 transmitter to the defendant that are either capable of being
 250 adjusted to fit a defendant of any size or that are made
 251 available in a variety of sizes.

252 Section 5. Section 907.09, Florida Statutes, is created to
 253 read:

254 907.09 Offenses related to electronic monitoring
 255 devices.--

256 (1) It is illegal for any person to intentionally alter,
 257 tamper with, damage, or destroy any electronic monitoring
 258 equipment used for monitoring the location of a person pursuant
 259 to court order, unless such person is the owner of the equipment
 260 or an agent of the owner performing ordinary maintenance and
 261 repairs. A person who violates this subsection commits a felony
 262 of the third degree, punishable as provided in s. 775.082, s.
 263 775.083, or s. 775.084.

264 (2) It is illegal for any person to develop, build,
 265 create, possess, or use any device that is intended to mimic,
 266 clone, interfere with, or jam the signal of an electronic
 267 monitoring device used to monitor the location of a person
 268 pursuant to court order. A person who violates this subsection
 269 commits a felony of the third degree, punishable as provided in
 270 s. 775.082, s. 775.083, or s. 775.084.

271 (3) A person may not intentionally alter, tamper with,
 272 damage, or destroy any data stored or transmitted by any

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273 electronic monitoring equipment used for monitoring the location
 274 of a person pursuant to court order with the intent to violate
 275 such court order or to conceal such a violation. A person who
 276 violates this subsection commits a felony of the third degree,
 277 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

278 Section 6. Section 944.161, Florida Statutes, is created
 279 to read:

280 944.161 Electronic monitoring of inmates within
 281 correctional facilities.--

282 (1) The department is authorized and encouraged to employ
 283 electronic monitoring of inmates within its custody who are
 284 incarcerated within state and private correctional facilities.

285 (a) Electronic monitoring services must have the
 286 capability to continuously receive and monitor electronic
 287 signals from a transmitter worn by an inmate so as to
 288 continuously monitor the inmate in real time and identify the
 289 inmate's specific geographic position within the facility at any
 290 time. Such transmitters must update in at least 5-second
 291 intervals and monitor the inmate's geographical location to
 292 within at least a 10-foot radius of his or her actual location
 293 or to within a radius that is equal to the width of a facility's
 294 average size sleeping quarters, whichever is less, subject to
 295 the limitations relating to the state of the art of the
 296 technology used and to circumstances of force majeure.

297 (b) Any electronic monitoring system employed shall also
 298 provide transmitters to be worn by department employees,
 299 employees of private-sector companies contracted to operate
 300 correctional facilities, and any visitors to correctional

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301 facilities who are provided access to areas that are designated
 302 for authorized personnel only. Such transmitters shall include a
 303 panic safety button and must have the capability to continuously
 304 receive and monitor electronic signals from a transmitter worn
 305 by an employee or visitor so as to continuously monitor
 306 employees and visitors in real time and identify their specific
 307 geographic positions at any time. Such transmitters must update
 308 in at least 5-second intervals and monitor employees and
 309 visitors to within a 10-foot radius of their actual location,
 310 subject to the limitations relating to the state of the art of
 311 the technology used and to circumstances of force majeure.

312 (c) Any electronic monitoring system employed shall also
 313 have the following technological and functional capabilities:

314 1. Be compatible with a commercially recognized wireless
 315 network access standard as designated by the department and have
 316 sufficient bandwidth to support additional wireless networking
 317 devices in order to increase the capacity for usage of the
 318 system by the correctional facility.

319 2. Be capable of issuing an alarm to an internal
 320 correctional monitoring station within 3 seconds after receiving
 321 a panic alert from an employee or visitor transmitter or within
 322 3 seconds after violation of the established parameters for
 323 permissible movement of inmates, employees, and visitors within
 324 the facility.

325 3.a. Be capable of maintaining a historical storage
 326 capacity sufficient to store up to 6 months of complete inmate,
 327 employee, and visitor tracking for purposes of follow-up
 328 investigations and vendor contract auditing. The system must be

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329 capable of recording for such purposes the continuous
 330 uninterrupted movement of all monitored individuals, including
 331 those in close proximity to any selected individual, by specific
 332 position, not by area or zone. Such historical information must
 333 also be capable of being archived by means of electronic data
 334 transfer to a permanent storage medium designated as acceptable
 335 by the department.

336 b. In addition, data collected from each facility each day
 337 shall be electronically transmitted to an offsite central
 338 clearinghouse designated by the department where the data shall
 339 be maintained in a secure storage location in a permanent
 340 storage medium designated as acceptable by the department as a
 341 supplemental backup in order to protect the archived data from
 342 alteration and to prevent loss due to disaster or other cause.

343 4. With respect to a unit affixed to an inmate, be capable
 344 of possessing an internal power source that is field
 345 rechargeable or that provides a minimum of 1 year of normal
 346 operation without need for recharging or replacing the power
 347 source. Batteries used in units must be replaceable by
 348 correctional employees. The device must emit signal content that
 349 indicates the power status of the transmitter and provides the
 350 correctional facility monitoring station with notification of
 351 whether the power source needs to be recharged or replaced.

352 5. Possess and emit signal content that indicates whether
 353 the transmitter has been subjected to tampering or removal.

354 6. Possess encrypted signal content or another feature
 355 designed to discourage duplication.

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356 7. Be of a design that is shock resistant, waterproof, and
 357 capable of reliable function under normal atmospheric and
 358 environmental conditions.

359 8. Be capable of wear and use in a manner that does not
 360 pose a safety hazard or unduly restrict the activities of the
 361 inmate.

362 9. Be capable of being attached to the inmate in a manner
 363 that readily reveals any efforts to tamper with or remove the
 364 transmitter upon visual inspection.

365 10. Either posses straps or other mechanisms for attaching
 366 the transmitter to the inmate which are capable of being
 367 adjusted to fit an inmate of any size or must be made available
 368 in a variety of sizes.

369 11. Be designed and constructed in such a way as to resist
 370 tampering with or removal by the inmate.

371 12. Provide a backup power source in the event of a power
 372 failure.

373 (2) A person may not intentionally alter, tamper with,
 374 damage, or destroy any electronic monitoring equipment used to
 375 monitor the location of a person within a correctional facility,
 376 unless the person is the owner of the equipment or an agent of
 377 the owner performing ordinary maintenance and repairs. A person
 378 who violates this subsection commits a felony of the third
 379 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 380 775.084.

381 (3) A person may not develop, build, create, possess, or
 382 use any device that is intended to mimic, clone, interfere with,
 383 or jam the signal of an electronic monitoring device used to

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384 monitor the location of a person within a correctional facility.
 385 A person who violates this subsection commits a felony of the
 386 third degree, punishable as provided in s. 775.082, s.
 387 775.083, or s. 775.084.

388 (4) A person may not intentionally alter, tamper with,
 389 damage, or destroy any data stored pursuant to subparagraph
 390 (1)(c)3. unless done so with written permission from an
 391 authorized official of the department or in compliance with a
 392 data-retention policy of the department adopted by rule. A
 393 person who violates this subsection commits a felony of the
 394 third degree, punishable as provided in s. 775.082, s. 775.083,
 395 or s. 775.084.

396 (5) The department is authorized to adopt rules pursuant
 397 to ss. 120.536(1) and 120.54 to implement the provisions of this
 398 section.

399 Section 7. Section 985.4047, Florida Statutes, is created
 400 to read:

401 985.4047 Electronic monitoring of juvenile offenders
 402 within juvenile facilities.--

403 (1) The department is authorized and encouraged to employ
 404 electronic monitoring of juvenile offenders within its custody
 405 who are incarcerated within state and private juvenile offender
 406 facilities for the purpose or reducing offender on offender
 407 violence and reducing employee sexual misconduct as defined in
 408 s. 985.4045.

409 (a) Electronic monitoring services must have the
 410 capability to continuously receive and monitor electronic
 411 signals from a transmitter worn by a juvenile offender so as to

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412 continuously monitor an offender in real time and identify at
413 any time the offender's specific geographic position within the
414 facility. Such transmitters must update in at least 5-second
415 intervals and monitor the offender's geographical location to
416 within at least a 10-foot radius of his or her actual location
417 or to within a radius that is equal to the width of a facility's
418 average size sleeping quarters, whichever is less, subject to
419 the limitations relating to the state of the art of the
420 technology used and to circumstances of force majeure.

421 (b) Any electronic monitoring system employed shall also
422 provide transmitters to be worn by department employees,
423 employees of private-sector companies contracted to operate
424 juvenile facilities, and any visitors to juvenile facilities who
425 are provided access to areas that are designated for authorized
426 personnel only. Such transmitters shall include a panic button
427 and must have the capability to continuously receive and monitor
428 electronic signals from a transmitter worn by an employee or
429 visitor so as to continuously monitor employees and visitors in
430 real time and identify their specific geographic positions at
431 any time. Such transmitters must update in at least 5-second
432 intervals and monitor employees and visitors to within a 10-foot
433 radius of their actual location, subject to the limitations
434 relating to the state of the art of the technology used and to
435 circumstances of force majeure.

436 (c) Any electronic monitoring system employed shall also:

437 1. Be compatible with a commercially recognized wireless
438 network access standard as designated by the department and have
439 sufficient bandwidth to support additional wireless networking

440 devices in order to increase the capacity for usage of the
441 system by the facility.

442 2. Be capable of issuing an alarm to an internal facility
443 monitoring station within 3 seconds after receiving a panic
444 alert from an employee or visitor transmitter or within 3
445 seconds after violation of the established parameters for
446 permissible movement of offenders, employees, and visitors
447 within the facility.

448 3.a. Be capable of maintaining a historical storage
449 capacity sufficient to store up to 6 months of complete
450 offender, employee, and visitor tracking for purposes of follow-
451 up investigations and vendor contract auditing. The system must
452 be capable of recording for such purposes the continuous
453 uninterrupted movement of all monitored individuals, including
454 those in close proximity to any selected individual, by specific
455 position, not by area or zone. Such historical information must
456 also be capable of being archived by means of electronic data
457 transfer to a permanent storage medium designated as acceptable
458 by the department.

459 b. In addition, data collected from each facility each day
460 shall be electronically transmitted to an offsite central
461 clearinghouse designated by the department where the data shall
462 be maintained in a secure storage location in a permanent
463 storage medium designated as acceptable by the department as a
464 supplemental backup in order to protect the archived data from
465 alteration and to prevent loss due to disaster or other cause.

466 4. With respect to a unit affixed to an offender, be
467 capable of possessing an internal power source that is field

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468 rechargeable or that provides a minimum of 1 year of normal
 469 operation without need for recharging or replacing the power
 470 source and batteries must be replaceable by facility employees.
 471 The device must emit signal content that indicates the power
 472 status of the transmitter and provides the facility monitoring
 473 station with notification of whether the power source needs to
 474 be recharged or replaced.

475 5. Possess and emit signal content that indicates whether
 476 the transmitter has been subjected to tampering or removal.

477 6. Possess encrypted signal content or another feature
 478 designed to discourage duplication.

479 7. Be of a design that is shock resistant, waterproof, and
 480 capable of reliable function under normal atmospheric and
 481 environmental conditions.

482 8. Be capable of wear and use in a manner that does not
 483 pose a safety hazard or unduly restrict the activities of the
 484 offender.

485 9. Be capable of being attached to the offender in a
 486 manner that readily reveals any efforts to tamper with or remove
 487 the transmitter upon visual inspection.

488 10. Either possess straps or other mechanisms for
 489 attaching the transmitter to the offender which are capable of
 490 being adjusted to fit an offender of any size or must be made
 491 available in a variety of sizes.

492 11. Be designed and constructed in such a way as to resist
 493 tampering with or removal by the offender.

494 12. Provide a backup power source in the event of a power
 495 failure.

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496 (2) A person may not intentionally alter, tamper with,
 497 damage, or destroy any electronic monitoring equipment used to
 498 monitor the location of a person within a juvenile facility,
 499 unless the person is the owner of the equipment or an agent of
 500 the owner performing ordinary maintenance and repairs. A person
 501 who violates this subsection commits a felony of the third
 502 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 503 775.084.

504 (3) A person may not develop, build, create, possess, or
 505 use any device that is intended to mimic, clone, interfere with,
 506 or jam the signal of an electronic monitoring device used to
 507 monitor the location of a person within a juvenile facility. A
 508 person who violates this subsection commits a felony of the
 509 third degree, punishable as provided in s. 775.082, s. 775.083,
 510 or s. 775.084.

511 (4) A person may not intentionally alter, tamper with,
 512 damage, or destroy any data stored pursuant to subparagraph
 513 (1)(c)3. unless done so with written permission from an
 514 authorized official of the department or in compliance with a
 515 data-retention policy of the department adopted by rule. A
 516 person who violates this subsection commits a felony of the
 517 third degree, punishable as provided in s. 775.082, s. 775.083,
 518 or s. 775.084.

519 (5) The department is authorized to adopt rules pursuant
 520 to ss. 120.536(1) and 120.54 to implement the provisions of this
 521 section.

522 Section 8. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 827 CS

Pretrial Release

SPONSOR(S): Planas

TIED BILLS:

IDEN./SIM. BILLS: SB 2018

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|-----------------------------------------------------|-----------------------|--------------------|--------------------|
| 1) <u>Criminal Justice Committee</u> | <u>8 Y, 0 N</u> | <u>Cunningham</u> | <u>Kramer</u> |
| 2) <u>Criminal Justice Appropriations Committee</u> | <u>5 Y, 0 N, w/CS</u> | <u>DeBeaugrine</u> | <u>DeBeaugrine</u> |
| 3) <u>Justice Council</u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions. With certain exceptions, there is a presumption in favor of release on nonmonetary conditions. Additionally, courts *must* impose conditions requiring the defendant on pretrial release to refrain from criminal activity of any kind and to refrain from contact with the victim.

HB 827 requires judges who grant monetary bail to set a separate and specific bail amount for each charge. This bill also provides that a court must require a defendant to comply with all conditions of pretrial release.

Bail, one of the most common monetary conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. As an alternative to posting bail, a defendant may employ the services of a bail bond agent who pledges that a defendant will appear at all scheduled proceedings before a court. If a defendant does not appear for judicial proceedings as ensured by the bail bond, the bond is considered breached and the court declares the bond "forfeited." In cases where a bond has been forfeited and not paid or discharged by a court within 60 days, the court enters a judgment against the bail bond agent for the amount of the bond.

HB 827 amends statutes relating to bail bonds, specifically their forfeiture, judgment, and cancellation. The bill provides that the bond does not guarantee sentencing deferrals and that bond conditions are satisfied upon acquittal or withholding of adjudication.

This bill takes effect October 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0827e.CJA.doc

DATE: 4/13/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security → This bill provides that a court must require persons on pretrial release to comply with all conditions of pretrial release.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Pretrial Release

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.¹ There is a presumption in favor of release on *nonmonetary* conditions² for any person who is granted pretrial release unless such person is charged with a dangerous crime.³ Although courts have the authority to impose any number of pretrial release conditions, courts *must* impose conditions requiring the defendant to refrain from criminal activity of any kind and to refrain from contact with the victim.⁴

Bail Bonds

Bail, one of the most common monetary conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. As an alternative to posting bail, a defendant may employ the services of a bail bond agent.⁵ A bail bond serves as a pledge by a bail bond agent that a defendant will appear at all scheduled proceedings before a court.

Bail bond agents are licensed and regulated by the Department of Financial Services (DFS), pursuant to chapter 648, F.S. A bail bond agent may either be a limited surety agent who is appointed by a surety insurance company to execute or countersign bail bonds, or a professional bail bond agent who pledges his or her own funds as security for a bail bond. The chapter provides requirements for licensure of bail bond agents, limits the amount of premium and expenses which can be charged, restricts the types of collateral which can be demanded, and requires that such collateral be returned in a timely manner once the bond has been canceled.

Chapter 903, F.S., sets forth the requirements relating to bail and bail bonds, including all forms of pretrial release. After a defendant has been released on bail, the bail bond agent has the authority to "surrender," or return, the defendant to the custody of the person who would have held the defendant absent the bail.⁶ Ordinarily, a bail bond agent will do this if the bail bond agent believes the defendant is a flight risk or if the collateral provided for bail is discovered to be insufficient. Upon surrender, the

¹ Conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130, Fla. R. Crim. Proc.

² Nonmonetary conditions include releasing defendants on their own recognizance. Rule 3.131(b)(1), Fla. R. Crim. Proc.

³ "Dangerous crimes" include: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; 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, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; and attempting or conspiring to commit any such crime. s. 907.041, F.S.

⁴ s. 903.047, F.S.

⁵ Section 648.25, F.S., defines "Professional bail bond agent" as any person who pledges United States currency, United States postal money orders, or cashier's checks as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

⁶ s. 903.21, F.S.

official taking custody of the defendant will issue a certificate acknowledging the surrender.⁷ The bail bond agent then can present the certificate and bond to the court which will issue an order exonerating the obligors and refunding money or bonds deposited as bail.⁸

If a defendant does not appear for judicial proceedings as ensured by the bail bond, the bond is considered breached and the court declares the bond "forfeited."⁹ Within 5 days after forfeiture of a bail bond, the court must mail a notice to the surety agent and the surety company.¹⁰ The forfeiture of a bond must be paid within 60 days of the date the notice to the bail bond agent and surety was filed.¹¹ However, after a breach of the bond, the law requires a court to "discharge" a forfeiture (before it is paid) within 60 days upon:

- a determination that it was impossible for the defendant to appear as required due to circumstances beyond the defendant's control;
- a determination that, at the time of the appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison; or
- surrender or arrest of the defendant if the delay has not thwarted the proper prosecution of the defendant.¹²

In addition to the above, the clerk of court must discharge the forfeiture of the bond if the defendant is arrested and returned to the county of jurisdiction of the court prior to judgment.¹³ The bail bond agent is required to pay the costs associated with returning the defendant to the county of jurisdiction, as a condition of the clerk discharging the forfeiture.¹⁴

In cases where a bond has been forfeited and not paid or discharged by a court within 60 days, the court enters a judgment against the bail bond agent for the amount of the bond.¹⁵ After the judgment is entered, the court is required to furnish DFS and the surety company issuing the bond with a certified copy of the judgment.¹⁶ If this judgment is not paid within 35 days, the court provides DFS and the sheriff of the county in which the bond was executed, copies of the judgment and a certification that the judgment has not been satisfied.¹⁷ DFS receives notice of the judgment and monitors unpaid judgments as a part of its regulation of surety insurance companies. Bail bond agents who have outstanding judgments which are unpaid for 35 days are precluded by law from executing bail bonds. After 50 days of an unpaid judgment, the surety company is precluded by law from issuing bail bonds.¹⁸

The law provides that within 10 days after all of the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled.¹⁹ All of the conditions of a bond are deemed to be satisfied after the defendant has been adjudicated guilty or not guilty.²⁰

Polakoff Bail Bonds v. Orange County

Section 903.31(1), F.S., states, in part: "An adjudication of guilt or innocence of the defendant shall satisfy the conditions of the bond."

Section 903.31(2), F.S. states:

⁷ *Id.*

⁸ *Id.*

⁹ s. 903.26, F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ s. 903.27, F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ s. 903.31, F.S.

²⁰ *Id.*

The original appearance bond shall not be construed to guarantee deferred sentences, appearance during or after a presentence investigation, appearance during or after appeals, conduct during or appearance after admission to a pretrial intervention program, payment of fines, or attendance at educational or rehabilitation facilities the court otherwise provides in the judgment. If the original appearance bond has been forfeited or revoked, the bond shall not be reinstated without approval from the surety on the original bond.

In *Polakoff Bail Bonds v. Orange County*, the Florida Supreme Court said the condition of an appearance bond was not satisfied when the trial court accepts a plea of guilty and enters a finding of guilt, but withholds adjudication and judgment and continues the case for sentencing until the completion of the presentence investigation.²¹ The court found that a judgment must be entered in order for the conditions of bond to be satisfied.²² The court read s. 903.31, F. S., in conjunction with s. 903.045, F.S., which explains the nature of a surety bail bond:

It is the public policy of this state and the intent of the Legislature that a criminal surety bail bond, executed by a bail bond agent licensed pursuant to chapter 648 in connection with the pretrial or appellate release of a criminal defendant, shall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond. The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bond agent of this commitment and obligation.²³

The court found that "in the context of a presentence investigation, unless the trial court adjudicates the defendant guilty and provides for the presentence investigation within the judgment, the bond is not satisfied and the defendant must continue to appear at all subsequent proceedings to avoid forfeiture."²⁴

Subsequent to the *Polakoff Bail Bonds* decision, the Fifth District Court of Appeal found that the Florida Supreme Court's decision in *Polakoff Bail Bonds* was limited to the circumstances of a presentence investigation where no judgment had been entered, but reasoned that "because there is never an adjudication of guilt or innocence before a defendant is accepted into a pretrial intervention program, we believe that the legislature must have intended, in cases involving pretrial intervention, an exception to the general rule requiring an adjudication for discharge of a bond."²⁵

Effect of Proposed Changes

Pretrial Release

Existing law mandates certain conditions of pretrial release. A defendant on pretrial release must refrain from criminal activity and must refrain from contact with the victim. This bill requires a defendant to comply with all conditions of pretrial release.

This bill also *requires* judges who grant monetary bail to set a separate and specific bail amount for each charge.²⁶

²¹ 634 So.2d 1083 (Fla. 1994).

²² *Id.* at 1085.

²³ *Id.*

²⁴ *Id.*

²⁵ *Rosenberg Bail Bonds v. Orange County*, 663 So.2d 1389, 1392 (Fla. 5th DCA 1995).

²⁶ Florida Statutes do not currently require (or prevent) a judge to set a separate bail for each offense charged. However, the usual practice is for judges to set one bail amount regardless of how many offenses a defendant is charged with.

Bail Bonds

This bill provides that in any case in which a bond forfeiture has been discharged by the court conditioned on payment of costs and fees, the amount for which judgment may be entered may not exceed the costs and fees. This bill provides that a bond does not guarantee sentencing deferrals and that an acquittal or withholding of adjudication satisfy the conditions of a bond.

This bill would have the effect of overruling the *Polakoff Bail Bond* holding that a bond is not satisfied when adjudication is withheld.

C. SECTION DIRECTORY:

Section 1. Amends s. 903.02, F.S., providing that any judge setting or granting bail shall set a separate bail amount for each charge or offense.

Section 2. Amends s. 903.047, F.S., requiring a defendant to comply with all conditions of pretrial release.

Section 3. Amends s. 903.27, F.S., providing that in cases in which the bond forfeiture has been discharged by the court, the amount of the judgment may not exceed the amount of unpaid fees or costs upon which the discharge had been conditioned.

Section 4. Amends s. 903.31, F.S., providing that the clerk of court shall furnish an executed certificate of cancellation to the surety; providing that the original appearance bond does not guarantee the defendant's conduct or appearance in court under certain circumstances.

Section 5. Provides for an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Provisions in the bill that bond is satisfied upon acquittal or withholding of adjudication and that the bond does not guarantee sentencing deferrals would appear to reduce the risk of forfeiture.

D. FISCAL COMMENTS:

There could be a slight workload increase associated with requiring judges to set bail separately for each charge or offense.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Appropriations Committee adopted a strike-all amendment on April 11, 2006. The amendment removed the following provisions from the original bill:

- The elimination of presumption in favor of monetary release for certain defendants.
- The requirement for the court to issue a capias or arrest warrant upon failure to appear that requires extradition of a defendant arrested in another state.
- The exoneration of the surety if the court refuses or fails to issue the capias or arrest warrant.
- The exoneration of the surety if the surety agrees in writing to pay transportation costs and the state attorney fails to institute extradition proceedings.
- The provision for automatic cancellation (without a court order) upon satisfaction of the conditions of the bond or discharge or remittance of the bond.
- The provisions that the original appearance bond does not guarantee the following: a guilty or nolo contendere plea; agreement to enter into pretrial intervention or deferred prosecution; acquittal; adjudication of guilt; withheld adjudication; or a finding of guilt by a judge or a jury.

The amendment further provides that the original appearance bond does not guarantee sentencing deferrals.

CHAMBER ACTION

1 The Criminal Justice Appropriations Committee recommends the
2 following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to pretrial release; amending s. 903.02,
8 F.S.; providing that any judge setting or granting bail
9 shall set a separate bail amount for each charge or
10 offense; amending s. 903.047, F.S.; requiring a defendant
11 to comply with all conditions of pretrial release;
12 amending s. 903.27, F.S.; providing that in cases in which
13 the bond forfeiture has been discharged by the court, the
14 amount of the judgment may not exceed the amount of the
15 unpaid fees or costs upon which the discharge had been
16 conditioned; amending s. 903.31, F.S.; providing that the
17 clerk of court shall furnish an executed certificate of
18 cancellation to the surety; providing that an acquittal or
19 a withholding of adjudication of guilt shall satisfy bond
20 conditions; specifying that an original appearance bond
21 does not provide certain guarantees; providing an
22 effective date.
23

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

25

26 Section 1. Subsection (4) is added to section 903.02,
27 Florida Statutes, to read:

28 903.02 Actions following with respect to denial; changes
29 in bail or conditions of bail or bond amount; separation by
30 charge or offense of bond prohibited; "court" defined.--

31 (4) Any judge setting or granting monetary bail shall set
32 a separate and specific bail amount for each charge or offense.
33 When bail is posted, each charge or offense requires a separate
34 bond.

35 Section 2. Subsection (1) of section 903.047, Florida
36 Statutes, is amended to read:

37 903.047 Conditions of pretrial release.--

38 (1) As a condition of pretrial release, whether such
39 release is by surety bail bond or recognizance bond or in some
40 other form, the defendant court shall require that:

41 (a) The defendant Refrain from criminal activity of any
42 kind, ~~and~~

43 (b) The defendant Refrain from any contact of any type
44 with the victim, except through pretrial discovery pursuant to
45 the Florida Rules of Criminal Procedure.

46 (c) Comply with all conditions of pretrial release.

47 Section 3. Subsection (1) of section 903.27, Florida
48 Statutes, is amended to read:

49 903.27 Forfeiture to judgment.--

50 (1) If the forfeiture is not paid or discharged by order
51 of a court of competent jurisdiction within 60 days and the bond

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52 is secured other than by money and bonds authorized in s.
 53 903.16, the clerk of the circuit court for the county where the
 54 order was made shall enter a judgment against the surety for the
 55 amount of the penalty and issue execution. However, in any case
 56 in which the bond forfeiture has been discharged by the court of
 57 competent jurisdiction conditioned upon the payment by the
 58 surety of certain costs or fees as allowed by statute, the
 59 amount for which judgment may be entered may not exceed the
 60 amount of the unpaid fees or costs upon which the discharge had
 61 been conditioned. Judgment for the full amount of the forfeiture
 62 shall not be entered if payment of a lesser amount will satisfy
 63 the conditions to discharge the forfeiture. Within 10 days, the
 64 clerk shall furnish the Department of Financial Services and the
 65 Office of Insurance Regulation of the Financial Services
 66 Commission with a certified copy of the judgment docket and
 67 shall furnish the surety company at its home office a copy of
 68 the judgment, which shall include the power of attorney number
 69 of the bond and the name of the executing agent. If the judgment
 70 is not paid within 35 days, the clerk shall furnish the
 71 Department of Financial Services, the Office of Insurance
 72 Regulation, and the sheriff of the county in which the bond was
 73 executed, or the official responsible for operation of the
 74 county jail, if other than the sheriff, two copies of the
 75 judgment and a certificate stating that the judgment remains
 76 unsatisfied. When and if the judgment is properly paid or an
 77 order to vacate the judgment has been entered by a court of
 78 competent jurisdiction, the clerk shall immediately notify the
 79 sheriff, or the official responsible for the operation of the

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80 county jail, if other than the sheriff, and the Department of
 81 Financial Services and the Office of Insurance Regulation, if
 82 the department and office had been previously notified of
 83 nonpayment, of such payment or order to vacate the judgment. The
 84 clerk shall also immediately prepare and record in the public
 85 records a satisfaction of the judgment or record the order to
 86 vacate judgment. If the defendant is returned to the county of
 87 jurisdiction of the court, whenever a motion to set aside the
 88 judgment is filed, the operation of this section is tolled until
 89 the court makes a disposition of the motion.

90 Section 4. Subsections (1) and (2) of section 903.31,
 91 Florida Statutes, are amended to read:

92 903.31 Canceling the bond.--

93 (1) Within 10 business days after the conditions of a bond
 94 have been satisfied or the forfeiture discharged or remitted,
 95 the court shall order the bond canceled and, if the surety has
 96 attached a certificate of cancellation to the original bond, the
 97 clerk of the court shall furnish an executed certificate of
 98 cancellation to the surety without cost. An adjudication of
 99 guilt or innocence, an acquittal, or a withholding of an
 100 adjudication of guilt of the defendant shall satisfy the
 101 conditions of the bond. The original appearance bond shall
 102 expire 36 months after such bond has been posted for the release
 103 of the defendant from custody. This subsection does not apply to
 104 cases in which a bond has been declared forfeited.

105 (2) The original appearance bond does ~~shall~~ not be
 106 ~~construed to~~ guarantee deferred sentences, sentencing deferrals,
 107 appearance during or after a presentence investigation,

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108 appearance during or after appeals, conduct during or appearance
109 after admission to a pretrial intervention program, payment of
110 fines, or attendance at educational or rehabilitation facilities
111 the court otherwise provides in the judgment. If the original
112 appearance bond has been forfeited or revoked, the bond shall
113 not be reinstated without approval from the surety on the
114 original bond.

115 Section 5. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1239

Child Abuse

SPONSOR(S): Detert

TIED BILLS: None.

IDEN./SIM. BILLS: SB 2266

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|-----------------------------------------------------|-----------------|--------------------|--------------------|
| 1) <u>Criminal Justice Committee</u> | <u>6 Y, 0 N</u> | <u>Cunningham</u> | <u>Kramer</u> |
| 2) <u>Future of Florida's Families Committee</u> | <u>6 Y, 0 N</u> | <u>Preston</u> | <u>Collins</u> |
| 3) <u>Criminal Justice Appropriations Committee</u> | <u>6 Y, 0 N</u> | <u>DeBeaugrine</u> | <u>DeBeaugrine</u> |
| 4) <u>Justice Council</u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

Florida has two statutes that address child abuse. Chapter 39, F.S., is a civil statute, relating to dependency, that defines child abuse, and specifically defines, what constitutes excessive corporal punishment. Section 827.03, F.S., is a criminal statute that defines "child abuse" (simple child abuse) and "aggravated child abuse," but does not specifically address corporal punishment.

Courts have looked to the above statutes in an attempt to determine when corporal discipline rises to the level of criminal child abuse. The courts' analyses and opinions have resulted in an "either or" approach to classifying excessive corporal discipline. Either excessive corporal discipline is *civil* child abuse, or it's *simple* (or aggravated) criminal abuse. The case law does not appear to contemplate that the same act of excessive corporal discipline (e.g., a severe beating that causes significant bruises or welts) could qualify as both *civil and simple* child abuse.

This bill amends the definition of the term "child abuse" in s. 827.03(1), F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver. The bill then defines the term "inappropriate or excessively harsh corporal discipline" as an act of discipline that results in or could reasonably be expected to result in any of the following or other similar injuries:

- sprains, dislocations, or cartilage damage;
- bone or skull fractures;
- brain or spinal cord damage;
- intracranial hemorrhage or injury to other internal organs;
- asphyxiation, suffocation, or drowning;
- injury resulting from the use of a deadly weapon;
- burns or scalding;
- cuts, lacerations, punctures, or bites;
- disfigurement;
- loss or impairment of a body part or function;
- significant bruises or welts; or
- mental injury.

There is no fiscal impact anticipated to either local or state governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1239e.CJA.doc

DATE: 4/17/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – The bill amends the definition of child abuse contained in s. 827.03, F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver and defines the term “inappropriate or excessively harsh corporal discipline.”

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Courts and legislative bodies have repeatedly recognized the difficulty in delineating a precise line between permissible corporal punishment and prohibited child abuse.¹ However, as stated by the Florida Supreme Court, the task of doing so is principally a legislative function.² Florida has two statutes that address child abuse. Chapter 39, F.S., is a civil statute that defines child abuse and specifically defines what constitutes excessive corporal punishment. Section 827.03, F.S., is a criminal statute that defines child abuse, but does not specifically address corporal punishment.

Chapter 39, F.S. – Civil Child Abuse

Chapter 39, F.S., a *civil* statute, designates certain types of excessive corporal punishment as *civil* child abuse.³ Section 39.01, F.S., provides that “corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

- Sprains, dislocations, or cartilage damage;
- Bone or skull fractures;
- Brain or spinal cord damage;
- Intracranial hemorrhage or injury to other internal organs;
- Asphyxiation, suffocation, or drowning;
- Injury resulting from the use of a deadly weapon;
- Burns or scalding;
- Cuts, lacerations, punctures, or bites;
- Permanent or temporary disfigurement;
- Permanent or temporary loss or impairment of a body part or function; or
- Significant bruises or welts.”

Under Chapter 39, F.S., protective investigations and dependency proceedings could result if there is a report that a child has been abused. A person who is found to have abused a child under Ch. 39, F.S., could also be charged with contributing to the dependency of a minor pursuant to s. 827.04, F.S.

Section 827.03(1), F.S. – Criminal Child Abuse

Section 827.03(1), F.S., a *criminal* statute, defines child abuse as:

- (a) Intentional infliction of physical or mental injury upon a child;

¹ See, e.g., *State v. McDonald*, 785 So.2d 640 (Fla. 2nd DCA 2001); *Corsen v. State*, 784 (So.2d 535 (Fla. 5th DCA 2001); *Moakley v. State*, 547 So.2d 1246 (Fla. 5th DCA 1989).

² *Raford v. State*, 828 So.2d 1012 (Fla. 2002).

³ *Id.*

- (b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- (c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

A person who knowingly or willfully abuses a child *without* causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a third degree felony.⁴ This type of child abuse is often referred to as “simple” child abuse.

Section 827.03(2), F.S., defines *aggravated* child abuse, and provides, in part, that aggravated child abuse occurs when someone knowingly and willfully abuses a child and in doing so actually *causes* great bodily harm, permanent disability, or permanent disfigurement to a child.

Case law - Relationship Between Chapter 39 and Section 827.03, F.S.

It might appear from the plain language of the statutes that a person who commits excessive corporal discipline, as defined by Ch. 39, F.S., could also be charged with a crime under s. 827.03, F.S. (either simple or aggravated depending on how serious the injury was). The courts, however, have used a different analysis.

In 2002, the Florida Supreme Court held that there is no parental privilege barring prosecution for simple child abuse under s. 827.03(1), F.S.⁵ In its decision, the court discussed corporal punishment and when such punishment rises to the level of simple child abuse. After reviewing the legislative histories of Ch. 39 and s. 827.03, F.S., the court stated that a parent can be charged with *simple* child abuse for excessive corporal punishment that falls between the level of abuse required to establish *civil* child abuse and that required to prove *aggravated* child abuse.⁶ The court stated that if a parent commits *civil* child abuse when a spanking results in significant welts, the legislature intended more serious beatings that do not rise to the level of aggravated child abuse to be treated as simple child abuse.⁷

In *King v. State*, 908 So.2d 954 (Fla. 2nd DCA 2005), the court cited the *Raford* case and held that a school administrator’s spanking that resulted in significant bruises or welts did not rise to the level of simple child abuse, but instead fell under the category of *civil* child abuse. The court noted, however, that their holding contradicted the plain language of s. 827.03(1), F.S. (defining child abuse as the intentional infliction of physical injury upon a child without causing great bodily harm, permanent disability, or permanent disfigurement). As such, the *King* court certified the following question to the Florida Supreme Court:

“Whether a spanking administered as corporal punishment that results in significant bruises or welts may constitute felony child abuse under Section 827.03(1), Florida Statutes.”

Despite the seeming incongruity in the law, the Florida Supreme Court denied review.⁸

Effect of the Case law

In essence, the courts appear to have created an “either or” approach to classifying excessive corporal discipline. Either excessive corporal discipline is *civil* child abuse, or it’s *simple* (or aggravated) criminal

⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, or s. 775.084, F.S.

⁵ *Raford v. State*, 828 So.2d 1012, 1020 (Fla. 2002)

⁶ *Id.* See also, *State v. McDonald*, 785 So.2d 640 (Fla. 2nd DCA 2001) (If a parent can be charged with civil child abuse when a spanking results in significant welts, the legislature intended more serious beatings that do not result in permanent disability or permanent disfigurement to be treated as simple child abuse.)

⁷ *Id.* at 1019.

⁸ *State v. King*, 908 So.2d 1058 (Fla. 2005).

abuse. The case law does not appear to contemplate that the same act of excessive corporal discipline (e.g., a severe beating that causes significant bruises or welts) could qualify as both *civil* and simple child abuse. This is despite the fact that the list of injuries that constitute excessive corporal discipline contained in Ch. 39, F.S., encompasses a wide range of injuries (e.g., injuries ranging from cuts and sprains to skull fractures, spinal cord damage, and permanent loss of a body part). If an act does not rise to the level of *simple* child abuse simply because it qualifies as *civil* child abuse, it is unclear when, if ever, a court will find that excessive corporal discipline qualifies as simple child abuse.

Effect of the Bill

This bill amends the definition of the term "child abuse" in s. 827.03(1), F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver. The bill then defines the term "inappropriate or excessively harsh corporal discipline" as "an act of discipline that results in or could reasonably be expected to result in any of the following or other similar injuries:

- sprains, dislocations, or cartilage damage;
- bone or skull fractures;
- brain or spinal cord damage;
- intracranial hemorrhage or injury to other internal organs;
- asphyxiation, suffocation, or drowning;
- injury resulting from the use of a deadly weapon;
- burns or scalding;
- cuts, lacerations, punctures, or bites;
- disfigurement;
- loss or impairment of a body part or function;
- significant bruises or welts; or
- mental injury."⁹

The bill also reenacts ss. 775.082(9)(a), 787.04(5), and 901.15(8), F.S., to incorporate the amendments to s. 827.03, F.S., in references thereto.

C. SECTION DIRECTORY:

Section 1. Amends s. 827.03, F.S., revising the definition of the term "child abuse" to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver; providing a penalty; and defining "inappropriate or excessively harsh corporal discipline."

Section 2. Reenacts s. 775.082(9)(a), F.S., relating to mandatory minimum sentences for certain reoffenders previously released from prison, to incorporate the amendment to s. 827.03, F.S., in references thereto.

Section 3. Reenacts s. 787.04(5), F.S., relating to removing minors from the state or concealing minors contrary to state agency order or court order, to incorporate the amendment to s. 827.03, F.S., in references thereto.

Section 4. Reenacts s. 901.15(8), F.S., relating to when an arrest by an officer without a warrant is lawful, to incorporate the amendment to s. 827.03, F.S., in references thereto.

Section 5. Provides for an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁹ This definition largely mirrors the language in Ch. 39, F.S.

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference predicted an insignificant impact on the inmate population as a result of the provisions of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution, because it is a criminal law.

2. Other:

In *Marshall v. Reams*, 32 Fla. 499, 14 So. 95 (1893), the Florida Supreme Court recognized the "right of a parent, or one standing in loco parentis, to moderately chastise for correction a child under his or her control and authority." This bill would not remove this right from parents. As stated in *Raford*, "a parent may assert as an affirmative defense his or her parental right to administer 'reasonable' or 'nonexcessive' corporal punishment, i.e., a typical spanking, in a prosecution for simple child abuse."¹⁰

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

¹⁰ *Raford v. State*, 828 So.2d 1012, 1020.

1 A bill to be entitled
 2 An act relating to child abuse; amending s. 827.03, F.S.;
 3 revising the definition of the term "child abuse" to
 4 include inappropriate or excessively harsh discipline of a
 5 child by a parent, legal custodian, or caregiver;
 6 providing a criminal penalty; defining the term
 7 "inappropriate or excessively harsh corporal discipline";
 8 reenacting ss. 775.082(9)(a), 787.04(5), and 901.15(8),
 9 F.S., relating to mandatory minimum sentences for certain
 10 reoffenders previously released from prison, removing
 11 minors from the state or concealing minors contrary to
 12 state agency order or court order, and when arrest by an
 13 officer without a warrant is lawful, to incorporate the
 14 amendment to s. 827.03, F.S., in references thereto;
 15 providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Subsection (1) of section 827.03, Florida
 20 Statutes, is amended, and subsection (5) is added to that
 21 section, to read:

22 827.03 Abuse, aggravated abuse, and neglect of a child;
 23 penalties.--

24 (1) "Child abuse" means:

25 (a) Intentional infliction of physical or mental injury
 26 upon a child;

27 (b) An intentional act that could reasonably be expected
 28 to result in physical or mental injury to a child; ~~or~~

29 (c) Active encouragement of any person to commit an act
30 that results or could reasonably be expected to result in
31 physical or mental injury to a child; or-

32 (d) Inappropriate or excessively harsh corporal discipline
33 of a child by a parent, legal custodian, or caregiver.

34
35 A person who knowingly or willfully abuses a child without
36 causing great bodily harm, permanent disability, or permanent
37 disfigurement to the child commits a felony of the third degree,
38 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

39 (5) For purposes of this section, "inappropriate or
40 excessively harsh corporal discipline" means an act of
41 discipline that results or could reasonably be expected to
42 result in any of the following or other similar injuries:

43 (a) Sprains, dislocations, or cartilage damage.

44 (b) Bone or skull fractures.

45 (c) Brain or spinal cord damage.

46 (d) Intracranial hemorrhage or injury to other internal
47 organs.

48 (e) Asphyxiation, suffocation, or drowning.

49 (f) Injury resulting from the use of a deadly weapon.

50 (g) Burns or scalding.

51 (h) Cuts, lacerations, punctures, or bites.

52 (i) Disfigurement.

53 (j) Loss or impairment of a body part or function.

54 (k) Significant bruises or welts.

55 (l) Mental injury, as defined in s. 39.01.

56 Section 2. For the purpose of incorporating the amendment
 57 made by this act to section 827.03, Florida Statutes, in a
 58 reference thereto, paragraph (a) of subsection (9) of section
 59 775.082, Florida Statutes, is reenacted to read:

60 775.082 Penalties; applicability of sentencing structures;
 61 mandatory minimum sentences for certain reoffenders previously
 62 released from prison.--

63 (9)(a)1. "Prison releasee reoffender" means any defendant
 64 who commits, or attempts to commit:

- 65 a. Treason;
- 66 b. Murder;
- 67 c. Manslaughter;
- 68 d. Sexual battery;
- 69 e. Carjacking;
- 70 f. Home-invasion robbery;
- 71 g. Robbery;
- 72 h. Arson;
- 73 i. Kidnapping;
- 74 j. Aggravated assault with a deadly weapon;
- 75 k. Aggravated battery;
- 76 l. Aggravated stalking;
- 77 m. Aircraft piracy;
- 78 n. Unlawful throwing, placing, or discharging of a
 79 destructive device or bomb;
- 80 o. Any felony that involves the use or threat of physical
 81 force or violence against an individual;
- 82 p. Armed burglary;

83 q. Burglary of a dwelling or burglary of an occupied
 84 structure; or
 85 r. Any felony violation of s. 790.07, s. 800.04, s.
 86 827.03, or s. 827.071;
 87
 88 within 3 years after being released from a state correctional
 89 facility operated by the Department of Corrections or a private
 90 vendor or within 3 years after being released from a
 91 correctional institution of another state, the District of
 92 Columbia, the United States, any possession or territory of the
 93 United States, or any foreign jurisdiction, following
 94 incarceration for an offense for which the sentence is
 95 punishable by more than 1 year in this state.

96 2. "Prison releasee reoffender" also means any defendant
 97 who commits or attempts to commit any offense listed in sub-
 98 subparagraphs (a)1.a.-r. while the defendant was serving a
 99 prison sentence or on escape status from a state correctional
 100 facility operated by the Department of Corrections or a private
 101 vendor or while the defendant was on escape status from a
 102 correctional institution of another state, the District of
 103 Columbia, the United States, any possession or territory of the
 104 United States, or any foreign jurisdiction, following
 105 incarceration for an offense for which the sentence is
 106 punishable by more than 1 year in this state.

107 3. If the state attorney determines that a defendant is a
 108 prison releasee reoffender as defined in subparagraph 1., the
 109 state attorney may seek to have the court sentence the defendant
 110 as a prison releasee reoffender. Upon proof from the state

111 attorney that establishes by a preponderance of the evidence
 112 that a defendant is a prison releasee reoffender as defined in
 113 this section, such defendant is not eligible for sentencing
 114 under the sentencing guidelines and must be sentenced as
 115 follows:

116 a. For a felony punishable by life, by a term of
 117 imprisonment for life;

118 b. For a felony of the first degree, by a term of
 119 imprisonment of 30 years;

120 c. For a felony of the second degree, by a term of
 121 imprisonment of 15 years; and

122 d. For a felony of the third degree, by a term of
 123 imprisonment of 5 years.

124 Section 3. For the purpose of incorporating the amendment
 125 made by this act to section 827.03, Florida Statutes, in a
 126 reference thereto, subsection (5) of section 787.04, Florida
 127 Statutes, is reenacted to read:

128 787.04 Removing minors from state or concealing minors
 129 contrary to state agency order or court order.--

130 (5) It is a defense under this section that a person who
 131 leads, takes, entices, or removes a minor beyond the limits of
 132 the state reasonably believes that his or her action was
 133 necessary to protect the minor from child abuse as defined in s.
 134 827.03.

135 Section 4. For the purpose of incorporating the amendment
 136 made by this act to section 827.03, Florida Statutes, in a
 137 reference thereto, subsection (8) of section 901.15, Florida
 138 Statutes, is reenacted to read:

139 901.15 When arrest by officer without warrant is
 140 lawful.--A law enforcement officer may arrest a person without a
 141 warrant when:

142 (8) There is probable cause to believe that the person has
 143 committed child abuse, as defined in s. 827.03. The decision to
 144 arrest shall not require consent of the victim or consideration
 145 of the relationship of the parties. It is the public policy of
 146 this state to protect abused children by strongly encouraging
 147 the arrest and prosecution of persons who commit child abuse. A
 148 law enforcement officer who acts in good faith and exercises due
 149 care in making an arrest under this subsection is immune from
 150 civil liability that otherwise might result by reason of his or
 151 her action.

152 Section 5. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1457 CS
SPONSOR(S): Lopez-Cantera
TIED BILLS:

Youth Custody Officers
IDEN./SIM. BILLS: SB 1398

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|-----------------------------------------------------|-----------------------|--------------------|--------------------|
| 1) <u>Juvenile Justice Committee</u> | <u>5 Y, 0 N, w/CS</u> | <u>White</u> | <u>White</u> |
| 2) <u>Criminal Justice Appropriations Committee</u> | <u>5 Y, 0 N</u> | <u>DeBeaugrine</u> | <u>DeBeaugrine</u> |
| 3) <u>Justice Council</u> | | | |
| 4) _____ | | | |
| 5) _____ | | | |

SUMMARY ANALYSIS

Under current law, a youth custody officer's (YCO's) powers are limited to taking juveniles into custody when the YCO has probable cause to believe that a juvenile has violated conditions of probation, home detention, conditional release, or postcommitment probation, or has failed to appear in court. Thus, if a YCO witnesses any other type of unlawful activity, whether committed by a juvenile in his or her custody or by any other person, the YCO must call a local law enforcement officer (LEO) to address the situation.

The bill amends current law to specify that the aforementioned powers represent the primary duties of a YCO and adds that a YCO, while in the performance of his or her duties, has statewide jurisdiction and the same authority and powers granted to LEOs, except that a YCO may not exercise any authority under the state's uniform traffic control code. Accordingly, under the bill, a YCO may address unlawful activity, other than traffic violations, without contacting a local LEO.

The bill also requires YCOs to be certified as LEOs under ch. 943, F.S.; whereas, under current law, YCOs may also be certified as correctional or correctional probation officers. This change has little practical effect on current practice. According to the Department of Juvenile Justice, all YCOs presently employed are certified as LEOs.

The DJJ states that this bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands Youth Custody Officer (YCO) authority by providing that a YCO, while in the performance of his or her duties, has statewide jurisdiction and the same authority and powers granted to law enforcement officers, except that a YCO may not exercise any authority under the state's uniform traffic control code.

B. EFFECT OF PROPOSED CHANGES:

Youth Custody Officers: Section 985.2075, F.S., creates the position of YCO within the Department of Juvenile Justice (DJJ). Subsection (1) authorizes a YCO to take a juvenile into custody if he or she has probable cause to believe that the juvenile has:

- Violated conditions of probation, home detention, conditional release, or postcommitment probation; or
- Failed to appear in court after receiving proper notice.

These are the **only** circumstances under which a YCO is statutorily authorized to take a juvenile into custody. Thus, if a juvenile commits a misdemeanor or felony offense in the officer's presence, he or she may not take the juvenile into custody for the offense or investigate the offense; instead, the YCO must call a law enforcement officer (LEO) from the local jurisdiction to take the juvenile into custody and to conduct the investigation.

Under s. 985.2075(2), F.S., a YCO must:

- Meet minimum qualifications for employment or appointment;
- Be certified under ch. 943, F.S., which provides for correctional, correctional probation, and law enforcement officer certifications; and
- Comply with the continued employment requirements under s. 943.135, F.S., which addresses the continued employment of correctional, correctional probation, and law enforcement officers.

According to data provided by the DJJ, there are 16 YCO positions assigned to nine judicial circuits (the 1st, 4th, 6th, 9th, 11th, 13th, 15th, 17th, and 18th Judicial Circuits). Three of these positions are not presently filled. During Fiscal Year 2004-05, YCOs apprehended 3,801 juveniles, which resulted in the closure of 4,596 cases.

Effect of bill: As discussed above, s. 985.2075, F.S., currently limits a YCO's authority to taking juveniles into custody for probation, home detention, conditional release, or postcommitment probation violations and for failing to appear in court. The bill amends this section to add that a YCO, while in the performance of his or her duties:

- *May file criminal charges and gather evidence for prosecution where the officer has probable cause to believe that a youth, who he or she has taken into custody, has committed violations of criminal law.*
- *Has statewide jurisdiction.*
- *Has the same authority and powers granted to law enforcement officers by law, including the authority to make arrest under ch. 901, F.S.,¹ carry firearms, serve court process, and seize*

¹ Chapter 901, F.S., sets forth Florida's law relating to arrests, including an officer's power to conduct warrantless arrests, "stop and frisk" a person, break into a building, and conduct searches of persons. See, e.g., Section 901.15, F.S. (authorizing an officer to make warrantless arrests under specified circumstances); Section 901.151, F.S. (specifying when an officer may detain a person and search the person for a weapon); Section 901.19, F.S. (specifying when an officer may use necessary and reasonable force to enter a building

contraband and the proceeds of illegal activities, except that the YCO may not exercise any power or duty authorized under ch. 316, F.S.,² or in s. 901.15, F.S which deal with traffic infractions.³

Finally, the bill requires YCOs to be certified as LEOs under ch. 943, F.S.; whereas, under current law, YCOs may also be certified as correctional or correctional probation officers. This change has little practical effect on current practice. According to DJJ, all YCOs presently employed are certified as LEOs..

The bill takes effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 985.2075, F.S., to expand YCO authority to that of a law enforcement officer when the YCO is the performance of his or her duties and to require YCOs to be certified as LEOs.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DJJ states that this bill will have no fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may generate an indeterminate cost savings to local law enforcement agencies to the extent that the bill's expansion of YCO powers results in fewer calls to local law enforcement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

or property to make an arrest); Section 901.21, F.S. (specifying requirements applicable to the search of an arrested person and surrounding area); and Section 901.211, F.S. (specifying requirements applicable to strip searches of arrested persons).

² Ch. 301, F.S., is this state's uniform traffic control code, which sets forth traffic offenses and provides for enforcement by specified law enforcement agencies in s. 316.640, F.S.

³ Section 901.15(5), F.S., addresses the authority of LEOs to make warrantless arrests subsequent to traffic violations.

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DATE: 4/11/2006

PAGE: 3

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 28, 2006, the Juvenile Justice Committee adopted a committee substitute that: (1) provides that YCOs may only exercise law enforcement powers while in the performance of their duties; (2) prohibits YCOs from exercising authority under the state's uniform traffic control code; (3) requires YCOs to be certified as LEOs under ch. 943, F.S.; and (4) reinstates existing law that requires YCOs to inform local law enforcement agencies of their activities.

HB 1457

2006
CS

CHAMBER ACTION

1 The Juvenile Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to youth custody officers; amending s.
7 985.2075, F.S.; providing that youth custody officers may
8 file criminal charges and gather evidence under specified
9 circumstances; providing that youth custody officers have
10 the authority and powers of law enforcement officers,
11 subject to specified exceptions, while in the performance
12 of their duties; requiring youth custody officers to be
13 certified as law enforcement officers; providing an
14 effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 985.2075, Florida Statutes, is amended
19 to read:

20 985.2075 Youth custody officer.--

21 (1) There is created within the department ~~of Juvenile~~
22 ~~Justice~~ the position of youth custody officer. The primary
23 duties of each youth custody officer shall be to take youth into

HB 1457

2006
CS

24 custody if the officer has probable cause to believe that the
 25 youth has violated the conditions of probation, home detention,
 26 conditional release, or postcommitment probation, or has failed
 27 to appear in court after being properly noticed. The authority
 28 of the youth custody officer to take youth into custody is
 29 specifically limited to these purposes ~~this purpose~~.

30 (2) While in the performance of his or her duties, a youth
 31 custody officer:

32 (a) May file criminal charges and gather evidence for
 33 prosecution where the officer has probable cause to believe that
 34 a youth, who he or she has taken into custody pursuant to
 35 subsection (1), has committed violations of criminal law.

36 (b) Has statewide jurisdiction.

37 (c) Has the same authority and powers granted to law
 38 enforcement officers by law, including the authority to make
 39 arrests under chapter 901, carry firearms, serve court process,
 40 and seize contraband and the proceeds of illegal activities,
 41 except that a youth custody officer may not exercise any power
 42 or duty authorized in chapter 316 or in s. 901.15(5).

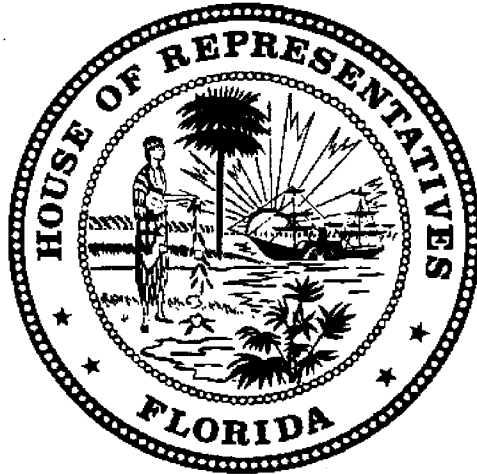
43 ~~(3)(2)~~ A youth custody officer must meet the minimum
 44 qualifications for employment or appointment, be certified as a
 45 law enforcement officer under chapter 943, and comply with the
 46 requirements for continued employment required by s. 943.135.
 47 ~~The department of Juvenile Justice~~ must comply with the
 48 responsibilities provided for an employing agency under s.
 49 943.133 for each youth custody officer.

HB 1457

2006
CS

50 (4)~~(3)~~ A youth custody officer shall inform appropriate
51 local law enforcement agencies of his or her activities under
52 this section.

53 Section 2. This act shall take effect July 1, 2006.



Justice Council

Tuesday, April 25, 2006
9:00 AM – 10:00 AM
404 House Office Building

Amendment(s)

Council Meeting Notice
HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Justice Council

Start Date and Time: Tuesday, April 25, 2006 09:00 am

End Date and Time: Tuesday, April 25, 2006 10:00 am

Location: 404 HOB

Duration: 1.00 hrs

Consideration of the following bill(s):

HB 199 Sovereign Immunity by Patterson
HB 495 CS Baker County by Bean
HB 591 CS Electronic Monitoring by Ambler
HB 827 CS Pretrial Release by Planas
HB 1239 Child Abuse by Detert
HB 1457 CS Youth Custody Officers by Lopez-Cantera

NOTICE FINALIZED on 04/24/2006 16:20 by COCHRAN.MARGARET

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 827

COUNCIL/COMMITTEE ACTION

| | | |
|-----------------------|-------|-------|
| ADOPTED | ___ | (Y/N) |
| ADOPTED AS AMENDED | ___ | (Y/N) |
| ADOPTED W/O OBJECTION | ___ | (Y/N) |
| FAILED TO ADOPT | ___ | (Y/N) |
| WITHDRAWN | ___ | (Y/N) |
| OTHER | _____ | |

|

1 Council/Committee hearing bill: Justice Council

2 Representative Planas offered the following:

3

4 **Amendment (with title amendments)**

5 Remove line 106 and insert:

6 ~~construed to~~ guarantee deferred sentences,

7

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

9 Remove lines 20-22 and insert:

10 conditions; providing an effective date.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 1239

COUNCIL/COMMITTEE ACTION

| | | |
|-----------------------|-------|-------|
| ADOPTED | ___ | (Y/N) |
| ADOPTED AS AMENDED | ___ | (Y/N) |
| ADOPTED W/O OBJECTION | ___ | (Y/N) |
| FAILED TO ADOPT | ___ | (Y/N) |
| WITHDRAWN | ___ | (Y/N) |
| OTHER | _____ | |

1

1 Council/Committee hearing bill: Justice Council

2 Representatives Detert offered the following:

3

4 **Amendment (with title amendments)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (2) of section 39.301, Florida

7 Statutes, is amended to read:

8 39.301 Initiation of protective investigations.--

9 (2)(a) The department shall immediately forward

10 allegations of criminal conduct to the municipal or county law
11 enforcement agency of the municipality or county in which the
12 alleged conduct has occurred.

13 (b) As used in this subsection, the term "criminal
14 conduct" means:

15 1. A child is known or suspected to be the victim of child
16 abuse, as defined in s. 827.03, or of neglect of a child, as
17 defined in s. 827.03, or of inappropriate or excessively harsh
18 corporal discipline as defined by s. 827.032.

19 2. A child is known or suspected to have died as a result
20 of abuse or neglect.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

21 3. A child is known or suspected to be the victim of
22 aggravated child abuse, as defined in s. 827.03.

23 4. A child is known or suspected to be the victim of
24 sexual battery, as defined in s. 827.071, or of sexual abuse, as
25 defined in s. 39.01.

26 5. A child is known or suspected to be the victim of
27 institutional child abuse or neglect, as defined in s. 39.01,
28 and as provided for in s. 39.302(1).

29 (c) Upon receiving a written report of an allegation of
30 criminal conduct from the department, the law enforcement agency
31 shall review the information in the written report to determine
32 whether a criminal investigation is warranted. If the law
33 enforcement agency accepts the case for criminal investigation,
34 it shall coordinate its investigative activities with the
35 department, whenever feasible. If the law enforcement agency
36 does not accept the case for criminal investigation, the agency
37 shall notify the department in writing.

38 (d) The local law enforcement agreement required in s.
39 39.306 shall describe the specific local protocols for
40 implementing this section.

41 Section 2. Section 827.032, Florida Statutes, is created
42 to read:

43 827.032 Inappropriate or excessively harsh corporal
44 discipline; penalties.--

45 (1) "Inappropriate or excessively harsh corporal
46 discipline" means an act of discipline that results or could
47 reasonably be expected to result in any of the following or
48 other similar injuries:

49 (a) Sprains, dislocations, or cartilage damage.

50 (b) Bone or skull fractures.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

- 51 (c) Brain or spinal cord damage.
- 52 (d) Intracranial hemorrhage or injury to other internal
- 53 organs.
- 54 (e) Asphyxiation, suffocation, or drowning.
- 55 (f) Injury resulting from the use of a deadly weapon.
- 56 (g) Burns or scalding.
- 57 (h) Cuts, lacerations, punctures, or bites.
- 58 (i) Disfigurement.
- 59 (j) Loss or impairment of a body part or function.
- 60 (k) Significant bruises or welts.
- 61 (1) Mental injury, as defined in s. 39.01.
- 62 (2) A parent, legal custodian, or caregiver who knowingly
- 63 or willfully inflicts inappropriate or excessively harsh
- 64 corporal discipline upon a child commits a felony of the third
- 65 degree, punishable as provided in s. 775.082, s. 775.083, or s.
- 66 775.084.
- 67 (3) APPLICABILITY - This section does not preclude
- 68 prosecution under s. 827.03 when s. 827.03 is charged in lieu of
- 69 this section.

70 Section 3. Paragraph (f) of subsection (3) of section
71 921.0022, Florida Statutes, is amended to read:

72 921.0022 Criminal Punishment Code; offense severity
73 ranking chart.--

74 (3) OFFENSE SEVERITY RANKING CHART

| Florida Statute | Felony Degree | Description |
|--------------------|------------------|--------------------|
| | | (f) LEVEL 6 |
| 316.193(2)(b) | 3rd | Felony DUI, 4th or |

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

| | | | |
|----|---------------|-----|--------------------------------------------------------------|
| 77 | | | subsequent conviction. |
| | 499.0051(3) | 2nd | Forgery of pedigree papers. |
| 78 | | | |
| | 499.0051(4) | 2nd | Purchase or receipt of legend drug from unauthorized person. |
| 79 | | | |
| | 499.0051(5) | 2nd | Sale of legend drug to unauthorized person. |
| 80 | | | |
| | 775.0875(1) | 3rd | Taking firearm from law enforcement officer. |
| 81 | | | |
| | 784.021(1)(a) | 3rd | Aggravated assault; deadly weapon without intent to kill. |
| 82 | | | |
| | 784.021(1)(b) | 3rd | Aggravated assault; intent to commit felony. |
| 83 | | | |
| | 784.041 | 3rd | Felony battery. |
| 84 | | | |
| | 784.048(3) | 3rd | Aggravated stalking; |

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

| | | | |
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| 85 | | | credible threat. |
| | 784.048 (5) | 3rd | Aggravated stalking of person under 16. |
| 86 | | | |
| | 784.07 (2) (c) | 2nd | Aggravated assault on law enforcement officer. |
| 87 | | | |
| | 784.074 (1) (b) | 2nd | Aggravated assault on sexually violent predators facility staff. |
| 88 | | | |
| | 784.08 (2) (b) | 2nd | Aggravated assault on a person 65 years of age or older. |
| 89 | | | |
| | 784.081 (2) | 2nd | Aggravated assault on specified official or employee. |
| 90 | | | |
| | 784.082 (2) | 2nd | Aggravated assault by detained person on visitor or other detainee. |
| 91 | | | |
| | 784.083 (2) | 2nd | Aggravated assault on code inspector. |

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

| | | | |
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| 92 | 787.02 (2) | 3rd | False imprisonment; restraining with purpose other than those in s. 787.01. |
| 93 | 790.115 (2) (d) | 2nd | Discharging firearm or weapon on school property. |
| 94 | 790.161 (2) | 2nd | Make, possess, or throw destructive device with intent to do bodily harm or damage property. |
| 95 | 790.164 (1) | 2nd | False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property. |
| 96 | 790.19 | 2nd | Shooting or throwing deadly missiles into dwellings, vessels, or vehicles. |
| 97 | 794.011 (8) (a) | 3rd | Solicitation of minor to participate |

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

| | | | |
|-----|--------------------|-----|-------------------------------------------------------------------------------------------------------------------------------------|
| 98 | | | in sexual activity by custodial adult. |
| | 794.05 (1) | 2nd | Unlawful sexual activity with specified minor. |
| 99 | | | |
| | 800.04 (5) (d) | 3rd | Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years. |
| 100 | | | |
| | 800.04 (6) (b) | 2nd | Lewd or lascivious conduct; offender 18 years of age or older. |
| 101 | | | |
| | 806.031 (2) | 2nd | Arson resulting in great bodily harm to firefighter or any other person. |
| 102 | | | |
| | 810.02 (3) (c) | 2nd | Burglary of occupied structure; unarmed; no assault or battery. |
| 103 | | | |
| | 812.014 (2) (b) 1. | 2nd | Property stolen |

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

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|-----|--------------------|-----|---------------------------------------------------------------------------------|
| 104 | 812.015 (9) | 2nd | \$20,000 or more, but less than \$100,000, grand theft in 2nd degree. |
| 105 | 812.13 (2) (c) | 2nd | Retail theft; property stolen \$300 or more; second or subsequent conviction. |
| 106 | 817.034 (4) (a) 1. | 1st | Robbery, no firearm or other weapon (strong-arm robbery). |
| 107 | 817.4821 (5) | 2nd | Communications fraud, value greater than \$50,000. |
| 108 | 825.102 (1) | 3rd | Possess cloning paraphernalia with intent to create cloned cellular telephones. |
| 109 | | | Abuse of an elderly person or disabled adult. |

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

| | | | |
|-----|------------------|------------|------------------------------------------------------------------------------------------------------------------------|
| 110 | 825.102(3)(c) | 3rd | Neglect of an elderly person or disabled adult. |
| 111 | 825.1025(3) | 3rd | Lewd or lascivious molestation of an elderly person or disabled adult. |
| 112 | 825.103(2)(c) | 3rd | Exploiting an elderly person or disabled adult and property is valued at less than \$20,000. |
| | 827.03(1) | 3rd | Abuse of a child. |
| | <u>827.032</u> | <u>3rd</u> | <u>Inappropriate or excessively harsh corporal discipline by a parent, legal custodian, or caregiver upon a child.</u> |
| 113 | 827.03(3)(c) | 3rd | Neglect of a child. |
| | 827.071(2) & (3) | 2nd | Use or induce a child in a sexual performance, or promote or direct |

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

| | | | |
|-----|-------------------|-----|----------------------------------------------------------------------------------------------------------------------------------------------------|
| 114 | | | such performance. |
| 115 | 836.05 | 2nd | Threats; extortion. |
| 116 | 836.10 | 2nd | Written threats to kill or do bodily injury. |
| 117 | 843.12 | 3rd | Aids or assists person to escape. |
| 118 | 847.0135 (2) | 3rd | Facilitates sexual conduct of or with a minor or the visual depiction of such conduct. |
| 119 | 914.23 | 2nd | Retaliation against a witness, victim, or informant, with bodily injury. |
| | 944.35 (3) (a) 2. | 3rd | Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, |

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

| | | | |
|-----|----------------|-----|-------------------------------------------------------------------------------------------------------|
| | | | resulting in great bodily harm. |
| 120 | 944.40 | 2nd | Escapes. |
| 121 | 944.46 | 3rd | Harboring, concealing, aiding escaped prisoners. |
| 122 | 944.47(1)(a)5. | 2nd | Introduction of contraband (firearm, weapon, or explosive) into correctional facility. |
| 123 | 951.22(1) | 3rd | Intoxicating drug, firearm, or weapon introduced into county facility. |

124
125 Section 4. This act shall take effect October 1, 2006.

126
127 ===== T I T L E A M E N D M E N T =====

128 Remove lines 2-15 and insert:
129 An act relating to inappropriate or excessively harsh corporal
130 discipline; amending s. 39.301, F.S.; including "inappropriate
131 or excessively harsh corporal discipline" to the definition of
132 "criminal conduct" in relation to protective investigations;
133 creating s. 827.032, F.S.; defining "inappropriate or

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

134 excessively harsh corporal discipline"; prohibiting parents,
135 legal custodians, or caregivers from inflicting inappropriate or
136 excessively harsh corporal discipline; providing penalties;
137 providing applicability; providing an effective date.

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